
(2016) 04 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 1592 of 1995

Sindhubai Balkrishna Mayur

APPELLANT

Vs

Jafarali Ismail Meghjani

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 671

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri. N.R Bhavar, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J.(Oral)—This petition has been admitted by this Court on 4.5.1995.

2. The respondents in this petition are the original defendants. Shri Jafarali passed away during the pendenc of the suit and his legal heirs, therefore, participated in the suit and thereafter in the Appeal proceedings.

3. The Court notice issued to the original defendants returned unserved since the defendants were not found to be residing at the suit premises. By order of this Court, dated 20.10.2004, notices were issued to the defendants on their new address. It is stated that the new address is the place where the defendants had a vacant plot during the pendency of the suit and the appeal and have subsequently, constructed a house. Since notice could not be served even on this address, the petitioner was granted liberty by order dated 1.12.2004, passed in Civil Application No.10401 of 2004 to serve the respondents/defendants by paper publication. Having so done, the petition was posted for final hearing by order dated 24.8.2009 passed in Civil Application No.375 of 2005.

4. Despite the above, neither had the defendants/respondents caused an appearance through an Advocate, nor have they appeared in person.

5. This Court had considered the submissions of the learned Advocate for the petitioners on 11.2.2016, and his contentions were recorded as under:-

"1. I have considered the submissions of the petitioners in the light of the judgment of the Trial Court dated 07/10/1988 and the judgment of the Appeal Court dated 20/09/1994. I have also considered the nature of construction carried out by the tenant in the tenanted property.

2. The petitioners submit that the open plot which was purchased by the tenants by paying an amount of Rs. 47,000/to the earlier landlord, continued to be an open plot when the Appeal Court decided RCA 10/1999. It was in the said backdrop that the Appeal Court concluded that if the tenants are evicted, an alternate accommodation is not available to them since the open plot owned by them does not have any construction standing.

3. Mr. Bhavar, learned Advocate for the petitioners submits that he would prefer to file a civil application so as to bring the subsequent facts/developments on record that the tenanted rooms are now locked and are in fact vacated by the tenants. He would also bring on record the subsequent events that the tenants have erected a residential construction on their open plot and hence alternate accommodation for the tenants is ready.

4. Mr. Bhavar further submits that the tenanted premises occupied by the petitioners have been directed to be vacated in a different proceeding initiated by the landlord Mr. Bafna, by the Trial Court. The civil appeal filed by the petitioners has also been dismissed by the Appeal Court and the petitioners are now in this Court in CRA No.120/2007, which is pending final hearing.

5. In the light of the above, this matter is adjourned to 10/03/2016 so as to enable the petitioners to take out a civil application for bringing the subsequent events on record. "

6. The petitioners filed Civil Application No. 3319 of 2016 for bringing the subsequent events on record. This Court issued notice and permitted the petitioners to once again serve the defendants through paper publication. Original copy of the paper publication was placed on record. Despite public notice, none appeared for the non-applicants/defendants. This Court, therefore, passed an order on 13.4.2016, thereby, allowing the Civil Application as under:-

"1. The non-applicants are served through paper publication. Original copy of the paper publication in Daily Lokmat, Ahmednagar edition dated 2.4.2016 is placed on record.

2. Despite public notice, none appears for the non-applicants.

3. I have considered the reasons cited by the applicants in the application, praying for bringing the necessary documents on record. The said application is, therefore, allowed in terms of prayer clause (B).

4. Shri Bhavar submits that documents at Exhibit A-1 to A-3 are to be brought on

record and they can be brought on record within one week. Said documents are permitted to be brought on record in the Writ Petition, along with a short affidavit on/or before 22.4.2016.

5. He prays for posting the Writ Petition for hearing on 28.4.2016, since the matter is part heard.

6. Considering the request, the addition of documents shall be complied with on/or before 22.4.2016.

7. Place the Writ Petition for final hearing on 28.4.2016 as part heard."

7. It is, therefore, apparent that despite two notices published in news papers as recorded above, none of the respondents/defendants have appeared before this Court.

8. I have considered the strenuous submissions of Shri Bhawar, learned Advocate for the petitioners.

9. The trial Court in RCS No. 357 of 1984, filed by the petitioners seeking eviction of the respondents/defendants, decreed the suit by its order dated 7.10.1988. The defendants challenged the said judgment in RCA No.10 of 1984. By the impugned judgment dated 20.9.1994, the Appeal Court interfered with the conclusions of the trial Court on the ground that the defendants/appellants were occupying two rooms on the ground floor and merely because they have a self owned vacant plot, there is no evidence that they have constructed a home on the said plot.

10. The Appeal Court, therefore, allowed the appeal on the ground that the plaintiffs have failed to prove that the defendants have any other accommodation at Shrirampur except the suit premises and therefore, it was concluded that, "Therefore, if we compare situation of the parties to the proceeding, condition of appellants is considerable on the point that if they are evicted from the suit premises, they will not be in a position to hide their heads under the roofs."

11. It is trite law that unless a Court comes to a conclusion that the findings on facts are perverse, erroneous and are likely to cause gross injustice, such finding on facts ought not to be interfered with. The Appeal Court has interfered with the judgment of the trial Court on the ground that they would suffer greater hardships, if they are evicted from the suit premises as they have no shelter to occupy and live in.

12. The petitioners have contended before this Court that none of the defendants are presently residing in the rented premises. The address of the rented premises is indicated as the address of the defendants. The notice issued by this Court could not be served upon the defendants as they were not available on the said address.

13. The petitioners submit that they are now residing in their own premises as they have constructed a home on a self owned plot which was vacant during the

pendency of the suit and the appeal. Photographs have been placed on record by the petitioners to indicate that the defendants/tenants are not residing in the tenanted premises and the same are locked/deserted. Similarly, despite public notices having been published in news papers having wide circulation in the concerned area, none of the defendants have appeared before this Court ever since the issuance of notices by this Court in the last about 20 years.

14. The above recorded subsequent events which are explicitly brought on record by the petitioners cannot be ignored. At the same time, I find that merely because a second view was possible, the Appeal Court has set aside the conclusions of the trial Court, which are findings on facts.

15. Considering the above, I find that the impugned judgment of the Appeal Court is rendered perverse.

16. As such, this petition is allowed. The impugned judgment of the Appeal Court dated 20.9.1994 is quashed and set aside and the judgment of the trial Court dated 7.10.1988 is sustained.

17. Rule is made absolute in the above terms.