
(2008) 02 BOM CK 0028
In the Bombay High Court
Case No : F.A. No. 1628 of 2003

Sitaram Balaram Surve

APPELLANT

Vs

Prabhakar Vidyadhar More and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 33

Citation : (2008) 6 ALLMR 260 : (2008) 5 MhLj 26

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : Nita Mandhyan, instructed by Vandana Mahadik, for the Appellant;
Naveen Joshi, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Heard learned Counsel for the appellant and the learned Counsel for the Respondents. The appellant is the original plaintiff who has taken an exception to the Judgment and Order dated 28th July, 2003 passed by the learned Judge of the City Civil Court, Mumbai. In a suit for declaration and injunction filed by the appellant, a preliminary issue regarding jurisdiction of the City Civil Court to entertain the suit was framed. The learned trial Judge came to the conclusion that in view of Section 33 of the Maharashtra Rent Control Act, 1999, it is the Court specified in the section which will have the exclusive jurisdiction to entertain and try the suit. The learned trial Judge held that the jurisdiction of his Court was barred and hence, he dismissed the suit.

2. The only submission made by the counsel for the appellant is that instead of dismissing the suit, the Court could have returned the plaint for presentation to the proper Court. The submission of the learned Advocate for the Respondents is that the learned Judge was right in dismissing the suit as the suit proceeds on the footing that the City Civil Court had the jurisdiction to try the suit. I have carefully considered the submissions. There is a clear finding recorded by the learned trial Judge that the suit ought to have filed in the Court of Small Causes

in view of Section 33 of the Maharashtra Rent Control Act, 1999. In my view, the learned Judge ought not to have dismissed the suit thereby giving rise to the multiplicity of the proceedings. The learned Judge ought to have returned the plaint for presentation to the proper Court. The appellant is not diluting the finding recorded by the trial Judge on the issue of the jurisdiction.

3. Hence, the impugned order will have to be modified. Hence, I pass the following order:

i) Only that part of the impugned Judgment and Decree by which the suit filed by the appellant is dismissed is hereby set aside.

ii) The plaint is ordered to be returned to the appellant-plaintiff for presentation to the appropriate Court.

iii) To the aforesaid extent, the impugned Judgment and decree dated 28th July, 2003 is modified.

iv) If the Record and Proceedings of the suit is received by this Court, the same shall be immediately transmitted to the trial Court.

v) The trial Court to act upon an authenticated copy of this order.