

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 28538 OF 2011

EDNA SUSHILA SAMUEL Appellant(s)
:VERSUS:
WAMAN KRISHNA GALANDE (D) THR.LRS. & ORS. Respondent(s)

O R D E R

1. This special leave petition seeks to challenge the judgment and order dated 8.7.2011 passed by learned Single Judge of the High Court of Judicature at Bombay in Second Appeal No.257 of 2011. By that judgment the learned Single Judge has left undisturbed the decisions of the First Appellate Court as also of the Trial Court i.e. Civil Judge, Senior Division, Pune rendered on 23.12.2010 in Regular Civil Suit No.1109 of 2003.

2. Heard Mr. Amol Chitale, learned counsel appearing for the petitioner and Mr. V.A. Mohta and Ms. Indu Malhotra, learned senior counsel appearing for the respondents. Mr. Manish Pitale has appeared for an intervenor.

3. The above referred suit was filed by the plaintiff-petitioner seeking an injunction against the respondents on the basis of her alleged possession of the property concerned. The suit property is a piece of land of about 10 acres, situate at Vadgaon Sheri, Taluka Haveli, District Pune. The plaintiff relied upon the Revenue entries from 1955 to 1998 and also the application made by the respondents to get Exemption Certificate under Section 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948. Apart from that the plaintiff relied upon the averments which the plaintiff had made in the plaint and some statements of the defendant-respondent in the Revenue proceedings.

4. It is the settled position that when a tenancy matter is in the Court, the Court decides the same on the basis of the evidence adduced before it. In that process the issues are framed, documents are exhibited, the revenue entries are examined and an appropriate inference is drawn. The 7x12 extract of one year which has been produced by the plaintiff-petitioner, shows the name of father of the plaintiff in the other rights column. The name of the ancestor of the respondent is also shown in the same column. This is the best document relied upon by the plaintiff-petitioner. As against that, without there being any other evidence which could be accepted by the Court, the Trial Court held that the plaintiff-petitioner claims to have possession of a parcel of land through her father who was an employee in a company, known as "Bombay Bio Products". It is not the case of the plaintiff-petitioner that the plaintiff was, in any way, the tenant of the respondent inasmuch as there are no rent receipts relied upon by the plaintiff. If the plaintiff was in possession of a parcel

of land and cultivating the land, she would have got the appropriate certificate under Section 32-G of the Bombay Tenancy and Agricultural Lands Act and claimed to be "protected tenant". The plaintiff failed to obtain that certificate also. That apart, if the plaintiff was in possession of the land and cultivating the same, as is contended by her, there would have been a number of documents which could have been produced and relied upon by her, like electricity bills, bills for payment of water charges, etc. and even for that matter, an affidavit or evidence of the neighbours could have been obtained and placed on record. But nothing of that kind was filed by the plaintiff and ultimately the suit was dismissed.

5. A question arises as to whether the Trial Judge has committed any error and if so, which is that. To this, the submission of the plaintiff-petitioner is that those revenue entries as well as the application made by the respondent for obtaining exemption certificate under Section 88C, should have been accepted as evidence in favour of the plaintiff, viz. that they will take appropriate proceedings against the tenant.

6. The revenue proceedings do show that the defendant has made some such statements, but those statements were made while seeking exemption. The Civil Court had to decide on the basis of the material that was adduced in evidence by the plaintiff before it. The Trial Judge could not hold that the plaintiff was in possession of the suit property on the basis of the material provided. The evidence of the plaintiff herself shows that her father was an officer in the aforesaid company, her husband was an officer in Merchant Navy and she was required to go along with him and she never visited this particular area i.e. the suit property for a number of years.

7. Mr. Mohta, learned senior counsel appearing on behalf of the respondents pointed out that the plaintiff was required to file another suit bearing No.104 of 2010 against one Mr. Popatlal Navalakha, who she claims to be her manager and who had also claimed independent possession on a parcel of the land. It is seen that this suit was for a permanent injunction and alternatively a prayer was also made therein that the possession be given to the plaintiff. If this is the position of the plaintiff in the other suit, it could not be said that she was in possession when she sought possession from Mr. Navalakha.

8. The land in question is a Ramoshi Watan land and the case of the defendant is that one Bhivaji Galande, who was the predecessor of the defendant, had purchased this land in auction and that is how their claim to be in possession. The revenue certificate (which is a 7x12 extract) also mentions the State Government as owner and the name of Galande in the other rights column. The Trial Court, therefore, examined all these records and noted that the tenancy Court had held that the plaintiffs were not tenants in the suit property. The Trial Court has also referred to the fact that the suit filed against Navalakha was filed in 1991 and therefore, the plaintiff was not in possession at that particular point of time also. This being the evidence, in our view, there was no occasion for the Trial Court to grant any injunction as sought by the plaintiff. The Trial Court also observed rightly that no documents were adduced by the plaintiff to show that at present she was in possession and also making payment of rent to the landlord defendant.

9. In view of these materials, the injunction could not have been confirmed by the First Appellate Court as well as by the High Court in the second appeal. We do not see any reason to interfere

with the impugned order passed by the High Court. The special leave petition is dismissed. Needless to state that the interim orders passed by this Court in special leave petition and the contempt petition, stand vacated.

10. We may also note that one Balu Khandu Ramoshi had filed a title suit, bearing No.636 of 2012, which is pending before the Joint Civil Judge, Senior Division, Pune. Mr. Manish Pitale has appeared on behalf of the aforesaid plaintiff by filing I.A No.6 of 2013. The present proceedings are arising out of the suit for injunction filed by the plaintiff Edna Samuel. Those proceedings filed by Balu Khandu Ramoshi will be decided on their own merits. I.A No.6 of 2013 stands disposed of accordingly.

CONTEMPT PETITION (CIVIL) NOS.103/2012 and 276/2012:

11. In view of the order passed by us in the special leave petition above-mentioned, these contempt petitions are also disposed of.

(H.L. GOKHALE)

.....J

.....J
(DIPAK MISRA)

New Delhi;
March 20, 2013.

ITEM NO.6

COURT NO.12

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).28538/2011

(From the judgement and order dated 08/07/2011 in SA No.257/2011 of the
HIGH COURT OF BOMBAY)

EDNA SUSHILA SAMUEL

Petitioner(s)

VERSUS

WAMAN KRISHNA GALANDE (D) THR.LRS. & ORS.

Respondent(s)

(With appln(s) for vacation/variation of ad-interim order, exemption from
filing O.T., impleadment and office report)

WITH

CONMT.PET.(C) NO. 103 of 2012 in SLP(C) No.28538/2011

CONMT.PET.(C) NO. 276 of 2012 in CONMT.PET.(C) NO. 103/2012
(With application for exemption from filing O.T.)

Date:20/03/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. GOKHALE
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Amol Chitale,Adv.

Ms. Pragya Baghel, Adv.

For Respondent(s) Mr. V.A. Mohta, Sr. Adv.
Mr. Indu Malhotra, Sr. Adv.
Mr. Prakash Vitthalrao Botre, Adv.
Mr. Pravin Satale, Av.
Mr. Anand Prakash Botre, Adv.
Mr. Ankur Gupta, Adv.
Mr. Rajiv Shankar Dvivedi, Adv.
Mr. Vanshdeep Dalmia, Adv.
Mr. Kush Chaturvedi, Adv.

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In I.A. No.6/13 Mr. Manish Pitale, Adv.
Mr. Sunil Kumar, Adv.
Mr. Chander Shekhar Ashri, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties. The special leave petition is dismissed in terms of the signed order. Needless to state that the interim orders passed by this Court in special leave petition and the contempt petition, stand vacated.

The contempt petitions are also disposed of in view of the order passed in the special leave petition.

(A.S. BISHT)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed order is placed on the file)