

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3368 OF 2019

(Arising out of S.L.P.(C) No.34883 of 2016)

Anant Shankar Bhave

....Appellant(s)

VERSUS

Kalyan Dombivli Municipal
Corporation

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.
2. This appeal is filed against the final judgment and order dated 26.10.2016 passed by the High Court of Bombay at Mumbai in Second Appeal No.160 of 2016 whereby the High Court dismissed the second appeal filed by appellant herein.

3. A few facts need mention for the disposal of this appeal, which involves a short point.

4. The appellant is the plaintiff and the respondent is the defendant in the civil suit out of which this appeal arises.

5. The dispute relates to the land bearing Survey No.61, Hissa No.1, admeasuring about 493 sq. yards Survey No. 61 (P) admeasuring about 1441 sq. yards situated at Mauje Kalyan Adharwadi Dombivali (MH) (hereinafter referred to as “the suit land”).

6. The appellant (plaintiff) filed a civil suit against the respondent - Municipal Corporation for claiming the following relief:

“The Hon’ble Court may be pleased to declare that the act of changing the alignment of the street line affecting the land bearing Survey No.61, Hissa No.1 admeasuring about 493 sq. yards, Survey No.61(P) admeasuring about 1441 sq. yards along with a structure/house standing upon it bearing Municipal Ali No.61, House No.14 situated at Mauje Kalyan, Adharwadi within the limits of Kalyan Dombivali Municipal Corporation is illegal, void and ultra-vires of the Act.

The Hon'ble Court may be pleased to declare that the defendants without following the due process of law and without following the provisions of the Acts, shall not construct road from the suit property. The Hon'ble Court may be further pleased to issue permanent injunction against the defendants and to maintain perfect status quo in respect to the suit property."

7. The respondent denied the appellant's claim and contested the suit. By judgment/decreed dated 12.08.1999, the Trial Court decreed the appellant's suit. The respondent felt aggrieved and filed first appeal (No.76/1999) before the First Appellate Court.

8. By its judgment dated 29.02.2000, the First Appellate Court allowed the appeal, set aside the judgment/decreed dated 12.08.1999 of the Trial Court and dismissed the appellant's suit. The appellant (plaintiff) felt aggrieved and filed Second Appeal in the High Court of Bombay.

9. By impugned judgment, the High Court dismissed the second appeal and affirmed the

judgment/decreed dated 29.02.2000 of the First Appellate Court which has given rise to filing of the present appeal by way of special leave by the plaintiff in this Court.

10. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appellant's second appeal.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to dispose of this appeal with the following observations and liberty granted to the parties.

12. In our considered opinion, the appellant has filed a misconceived suit and claimed therein improper reliefs.

13. The real grievance of the appellant should have been that he was the owner of the suit land and, therefore, the defendant (respondent) had no right to

interfere on the suit land and nor had any right to construct any road or any type of construction without following a due process of law on the suit land.

14. First, the appellant was required to prove his ownership over the suit land *qua* the respondent; Second, he was required to prove that the respondent has either entered on the suit land or is trying to enter upon the suit land with a view to construct the road on his land or is intending to make some construction without following the due process of law in acquiring the suit land and paying adequate compensation to the appellant for the suit land.

15. The appellant, however, did not come to the Court for claiming the aforementioned reliefs and nor he proved the aforementioned facts and instead claimed improper reliefs as mentioned above.

16. In our view, the proper reliefs, which we have set out above alone, could have settled the controversy in

relation to the suit land between the parties and not the one raised in these proceedings. We also find that these issues were not tried in these proceedings for want of proper pleadings and the evidence.

17. It is for these reasons, though we are inclined to dismiss the appeal finding no merit therein but grant liberty to the appellant (plaintiff) to file a fresh civil suit against the respondent to claim the proper reliefs in relation to the suit land, which we have mentioned above, by properly pleading and adducing evidence in support of his case in accordance with law.

18. We, however, make it clear that while trying the suit, the findings recorded by the Courts below in the present proceedings will not come against any party and nor will operate *res judicata* against any party. In other words, the issues raised in the fresh suit will be tried independently on the basis of the pleadings and evidence adduced therein.

19. With these observations and the liberty granted,
the appeal fails and is hereby dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
April 02, 2019