

Sunil Vs. Prabhakar

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Court : Mumbai Nagpur

Decided On : Feb-22-2013

Judge : The Honourable Mrs. Justice Vasanti a. Naik

Appeal No. : Writ Petition No.370 of 2009

Appellant : Sunil

Respondent : Prabhakar

Judgement :

Oral Judgment:

By this petition, the petitioner impugns the judgments passed by the trial and the first appellate Court granting a decree of eviction and possession in favour of the respondent-landlord and against the petitioner-tenant.

2. The respondent is the original plaintiff. A suit was instituted by the respondent for ejection and possession under Section 16(1)(h) of the Maharashtra Rent Control Act, 1999. It was the case of the plaintiff that in the month of September, 2003 the Nagpur Improvement Trust had proposed to widen the road and the portion which was in occupation of the petitioner-defendant was required to be demolished for road widening. It was pleaded that since the plaintiff was asked by the Nagpur Improvement Trust to demolish the shop block, it was necessary for the defendant to vacate the shop block so that the plaintiff could demolish the portion in occupation of the defendant and construct a new building.

3. The case of the plaintiff was denied by the petitioner-tenant. It was denied that the Nagpur Improvement Trust had proposed to widen the road and had asked the plaintiff to demolish the portion in occupation of the defendant for road widening purposes. The defendant denied that it was necessary for the defendant to vacate the premises so that the plaintiff could demolish the said premises and construct a new building.

4. On the aforesaid pleadings, the parties tendered the evidence and on an appreciation of the same, the trial Court, by the judgment dated 06/08/2008, decreed the suit of the plaintiff. Being aggrieved by the judgment and decree, the petitioner filed an appeal before the District Judge. The District Judge, by the judgment dated 19/12/2008, dismissed the appeal filed by the petitioner. Both the judgments are challenged in the instant petition.

5. It appears on a perusal of the petition and the cross-examination of the witness of the Nagpur Improvement Trust that the witness had clearly admitted in his cross-examination that the work of road widening on Zingabai Takali Road was completed. It was admitted by the witness for the Nagpur Improvement Trust that after 2003, no new tender was issued. It was also admitted by the witness that in the year 2003 no notice was issued to the plaintiff in regard to the road widening. Since the admissions made by the witness of the Nagpur Improvement Trust were crucial and relevant for the purpose of deciding the controversy between the parties, it was necessary for the first appellate Court to have considered the admissions. However, the crucial and the important admissions of the witness for the Nagpur Improvement Trust in his cross-examination were not considered by the Court. The Court had failed to consider the material evidence before deciding the appeal on merits. The case of the plaintiff was that the Nagpur Improvement Trust required the premises in occupation of the petitioner for road widening and hence, the petitioner should vacate the premises so that the plaintiff could construct a new building. The admissions of the witness of the Nagpur Improvement Trust in regard to the completion of the road widening work and the absence of issuance of notice to the plaintiff in the year 2003 in regard to the road widening were vital and crucial admissions, which had a bearing on the issue involved. However, the Courts failed to consider the crucial admissions. At least,

the first appellate Court being a final fact finding Court ought to have considered the admissions.

6. Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned judgment dated 19/12/2008 is quashed and set aside. The matter is remanded to the first appellate Court for deciding the appeal afresh on merits in accordance with law.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

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