

CASE NO.:
Appeal (civil) 2753-2754 of 1998

PETITIONER:
HUBLI DHARWAR MUNICIPAL CORPORATION AND ANOTHER

Vs.

RESPONDENT:
H.S.MOHD.KHAN (DEAD) BY LRS. & ORS.

DATE OF JUDGMENT: 14/12/2001

BENCH:
D.P. Mohapatra & P. Venkatarama Reddi

JUDGMENT:

D.P.Mohapatra, J.

The core of the dispute raised in these appeals relates to specific performance of the agreement dated 10.1.1968 for sale of land, entered into between the Hasankhan Shye Mohammed Khan (dead represented by Lrs.) (hereinafter referred to as 'the owner') and the Hubli Dharwar Municipal Corporation (hereinafter referred to as 'the Municipal Corporation'). Both the parties filed suits; the Municipal Corporation filed the suit for specific performance of the agreement of sale and the owner filed the suit for declaration of title to the property and for injunction. The trial Court dismissed both the suits.

Both the parties filed appeals before the district court. The first appellate court reversed the judgment of the trial Court dismissing the suit filed by the Municipal Corporation and decreed the said suit, and confirmed the judgment of the trial Court dismissing the suit filed by the owner.

The owner of the property filed two Second Appeals, RSA No.642/97 and RSA No.650/97 challenging the judgment and decrees passed by the first appellate Court. Both the Second Appeals were decided by the common judgment dated 11.12.1997 in which the appeals were allowed and the judgment/decrees passed by the first appellate Court were reversed. Consequentially the suit filed by the Municipal Corporation for specific performance of the agreement of sale was dismissed and the suit filed by the owner of the property seeking declaration of the title and injunction was decreed. Further, on the prayer of the owner for amendment of the plaint to add the relief of recovery of possession of the property in dispute the High Court decreed the suit including the prayer for recovery of possession. Feeling aggrieved by the judgment of the High Court the Municipal Corporation filed these appeals assailing the same.

The main thrust of arguments of the learned counsel appearing for the appellants was that the Second Appeals were allowed by the High Court when they were listed in the

court for admission; that no substantial question of law was formulated by the learned Judge and furthermore the petition for amendment of the plaint which was filed by the owner on 5.12.1997 was allowed and the judgment disposing of the appeals was rendered on 11.12.1997 without giving adequate opportunity to the Municipal Corporation to file objections.

In order to be satisfied about correctness of the contentions raised by learned counsel for the appellants we perused the order sheets in the Second Appeals. We find that the contentions raised by the learned counsel have substance. Indeed, the appeals were decided on the day they were listed for admission without framing any substantial question of law. Further, on the petition filed by the owner on 5.12.1997 for amendment of the plaint no opportunity was granted to the Municipal Corporation to file its objection, and no separate order allowing the amendment petition was passed by the Court. The said petition was allowed in the judgment in which the appeals filed by the owner were allowed and the suit filed by him was decreed for the reliefs claimed in the plaint including the relief of recovery of possession of the property.

On the facts and in the circumstances of the case, we are of the view that the manner of disposal of the Second Appeals was contrary to the procedure prescribed under Section 100 of the Code of Civil Procedure. The High Court was clearly in error in allowing the Second Appeals. Therefore, the judgment of the High Court is unsustainable and is liable to be set aside.

Accordingly, the appeals are allowed, the judgment/decreed dated 11.12.1997 of the High Court in RSA No.650/97 and RSA No.642/97 are set aside and the matters are remitted to the High Court for fresh disposal of the Second Appeals in accordance with law. The High Court should now proceed to take up the second appeal for admission, frame the substantial questions of law and hear the appeal at an early date. The question, whether the amendment application shall be allowed, should be decided by the High Court either before or in the course of hearing the appeal and, consequentially, if any substantial question of law arises therefrom it has to be decided by the High Court. In the circumstances of the case, there shall be no order as to costs.

.....J.
(D.P. Mohapatra)

.....J.
(P.Venkatarama Reddi)

December 14, 2001