

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 3591 OF 2019
(Arising out of SLP(C) No(s).22380 of 2018)

PRADEEPKUMAR GORDHANDAS PATEL

Appellant(s)

VERSUS

CHANDRAKANT JIVANLAL PATEL

Respondent(s)

J U D G M E N T

R. SUBHASH REDDY, J.:

Leave granted.

(2) This civil appeal is filed aggrieved by judgment and order dated 19.06.2018 passed by the High Court of Gujarat at Ahmedabad in R/Special Civil Application No.10271 of 2013.

(3) The appellant claims that he has purchased the property being No.86, Vibhaag-1, Uttar Gujarat Patel Society, Asarwa at Ahmedabad in 1994 and he was put in possession. At the first instance, the appellant preferred a simplicitor suit for permanent injunction bearing CS NO.1069 of 2003 which was subsequently dismissed. In the year 2010, the appellant has also filed Civil Suit No.2929 of 2010 before the City Civil Court, Ahmedabad, for specific performance for the execution of the sale deed and seeking directions to restrain the respondent

and others from disturbing his possession. The said suit is still pending. On 01.07.2011 the respondent herein has filed an application, P.S.R.P. NO.22 of 2011, under Section 41 of the Presidency Small Causes Act, 1882 (for short, 'the Act'), seeking vacant possession of the property in question. On 05.08.2011 the appellant herein also filed an application under Section 47 of the Act seeking stay of the application (P.S.R.P. No.22 of 2011) filed by the respondent. The Small Causes Court by order dated 28.01.2013 rejected the application of the appellant filed under Section 47 of the said Act. Aggrieved by the same, the appellant preferred Special Civil Application No.1027 of 2013 before the High Court of Gujarat at Ahmedabad. The High Court vide order dated 19.06.2018 has dismissed the said special civil application by giving a further direction to the appellant to vacate the premises in question which is the subject-matter of P.S.R.P.No.22 of 2011.

(4) We have heard Mr. Devadatt Kamat, learned senior counsel appearing for the appellant and Ms. Anushree Prashit Kapadia, learned counsel appearing for the respondent and also perused the impugned judgment and the other materials on record.

(5) Mr. Devadatta Kamat, learned senior counsel appearing for the appellant, has mainly contended that the High Court has committed an error in issuing the direction to the appellant to vacate the premises while dismissing Special Civil Application filed under Article 227 of the Constitution of India, which application is filed against order dated 28.01.2013 passed by

the Small Causes Court. Mr. Kamat has further submitted that inasmuch as no order is passed under either Section 41 or 43 of the Presidency Small Causes Courts Act, 1882, the High Court ought not to have issued any direction to the appellant for vacating the premises.

(6) Ms. Anushree Prashit Kapadia, learned counsel appearing for the respondent, has submitted that in the application (P.S.R.P. NO.22/2011) filed under Section 41 of the Act, so far no order is passed either under Section 41 or Section 43 of the Act. Ms. Anushree Prashit Kapadia has further submitted that the application filed by the appellant under Section 47 of the Act is rightly rejected by the Small Causes Court and same is confirmed by the High Court.

(7) The suit filed by the appellant claiming specific performance of the contract and for execution of the Sale Deed is pending consideration. During the pendency of the said suit, the respondent herein has filed application in P.S.R.P. No.22 of 2011 under Section 41 of the Act, in the said application no order is passed for eviction of the appellant. The application filed by the appellant herein under Section 47 of the Act is rightly rejected by the Small Causes Court but the High Court, while confirming the said order, has gone beyond the scope of the application and issued directions to the appellant to vacate the premises. As much as no order is passed either under Section 41 or under Section 43 of the Act

by the Small Causes Court, the High Court has committed error in issuing directions to the appellant to vacate the premises, which is subject matter of the petition.

(8) For the aforesaid reasons, the direction issued, in the impugned order to the extent of directing the appellant to vacate the premises, is hereby set aside. We make it clear that all contentions are left open and it is open for the Small Causes Court to decide the application (P.S.R.P. No.22 of 2011) filed by the respondent under Section 41 of the Act on its own merits as expeditiously as possible preferably within a period of three months from the receipt of a copy of this order. We further make it clear that this Court has not expressed any opinion on the merits of the matter.

(9) The civil appeal is partly allowed with the directions, as indicated above. No order as to costs.

.....J.
(R. BANUMATHI)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
APRIL 9, 2019.