

Resham Singh Pyara Singh

Vs

Abdul Sattar

SLPs (C) Nos. 25032-33 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

20.11.1995

ORDER

1. These SLPs arise from the order dated 13-10-1995 of the Division Bench of the Bombay High Court in LPA Stamp No. 26774 of 1995 and the order dated 13-9-1995 in appeal from Order No. 826 of 1994.
2. The petitioner claims to have entered into an agreement on 21-6-1973 to purchase certain lands from A. H. Wadia Charity Trust. In 1975, when one Mohd. Amin and others attempted to construct a boundary wall in the said land, he claimed to have filed Suit No. 298 of 1975 in the City Civil Court, Bombay and had an injunction against them restraining them from interfering with his possession and construction of the boundary wall. When the petitioner had attempted to repair the existing road on the land and open drainage, the respondent filed Suit No. 493 of 1990 in the City Civil Court, Bombay for injunction. The respondent claimed to be in possession of the land admeasuring 1947 sq. mts. On its basis, the petitioner claimed that they were attempting to trespass into his land. Consequently, the appellant filed Suit No. 3670 of 1994 on 16-6-1994 and also sought ad interim injunction to restrain the respondent from committing trespassing into his land. Initially, interim injunction was granted on 28-6-1994. When the appeal was filed against that order the learned Single Judge of the High Court directed the Commissioner to demarcate the lands in exclusive possession and enjoyment of the petitioner within the compound wall by order dated 13-9-1995. Against that order, the petitioner filed Letters Patent Appeal contending that the order of the learned Single Judge amounts to granting temporary mandatory injunction to break the compound wall and removing article etc. By the impugned order dated 13-(sic)-1995, the Division Bench rejected the same on the ground that LPA would not lie against the order of the learned Single Judge. Thus these SLPs.
3. It is contended for the petitioner that as per the law laid down by this Court in Shah Babulal Khimji v. Jayaben D. Kania, LPA would lie to the Division Bench against the interlocutory order of the Single Judge and, therefore, the view of the High Court is not correct in law. We find no force in the contention.
4. Order 43 Rule 1 CPC provides an appeal from the orders passed under Order 39 Rule 1 etc. as stated in sub-rule (r), which provides as under :

"(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX."
5. Section 104 CPC provides for an appeal from the orders provided in Order 43 save as otherwise expressly provided in the body of this Code or by any law for the time being in force and from no

other orders. Sub-section (2) envisages that

"(2) No appeal shall lie from any order passed in appeal under this Section".

6. It would, therefore, be clear that when an appeal was filed against the order of the City Civil Court, Bombay to the learned Single Judge under Order 43 Rule 1(r) as provided in sub-section (1) of Section 104 by operation of sub-section (2) of Section 104, no further appeal shall lie from any order passed in appeal under this section. In Khimji case the suit was filed on the original side of the High Court and the learned Single Judge on the original side passed an interlocutory order. Against the orders of the learned Single Judge, though it was an interlocutory order, since the appeal would lie to the Division Bench under the Letters Patent, this Court held that against the interlocutory orders passed by the Single Judge, Letters Patent Appeal would be maintainable. That ratio, therefore, is clearly inapplicable to the facts in this case.

7. The SLPs are accordingly dismissed.