

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 1602 OF 2014
WITH
CIVIL APPLICATION NO. 9104 OF 2014

Dr. Naseem Iqbal Mamdani **....Appellant.**

Versus

Dr. Nawaz Junaaid Ahmed s/o.
Mohammed Nawaz **....Respondent.**

Mr. C.V. Thombre, Advocate for appellant.

Mr. A.D. Kasliwal, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 15th July, 2015.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Special Civil Suit No. 541/2011, which was pending in the Court of Civil Judge, Senior Division, Aurangabad. The suit filed by respondent for relief of possession of immovable property is decided in his favour. Both the sides are heard.

2. The suit was filed in respect of property bearing Plot No. 12 from N-12, F-Sector, CIDCO, Aurangabad which admeasures 4114 Sq. Ft. There was one building constructed for residential purpose which was having structure of ground plus two. It is the case of plaintiff that he was serving in United Arab

Amirat since 2006 and his mother was taking care of his property including the suit property. It is contended that the defendant somehow convinced his mother that defendant wanted to start the school and the property can be given to him for use of the school. It is the case of plaintiff that the mother of the plaintiff then allowed the defendant to use the building for running school and the defendant promised to pay Rs. 13,000/- per month for using premises. It is a case of plaintiff that the property was given in possession of defendant on 1.6.2006.

3. It is the case of plaintiff that he had not authorized his mother to execute any document atleast till 1.6.2006 in respect of the suit property. It is contended that some document was obtained from his mother by the defendant. As per his information, the mother told that the document was of formal nature and it could not have any legal weight. It is contended that some document dated 26.6.2006 was prepared by defendant by misleading his mother.

4. It is the case of plaintiff that though his mother had allowed the defendant to use the property for short period, the defendant avoided to vacate the premises. It is contended that defendant did not pay the occupancy charges which he had

agreed to pay and it is the plaintiff who was required to pay all kinds of taxes to Corporation. It is contended that the defendant had promised to shift the institution to other place shortly, but he did not act accordingly. It is contended that he made alterations in the building, which were done without the permission of plaintiff or his mother.

5. It is the case of plaintiff that he is cardiologist and he is planing to start his own hospital in the suit property. It is the case of plaintiff that the wife of the plaintiff is also doctor and she is also willing to start hospital in the suit premises. It is contended that plaintiff requested many times to vacate the suit premises, but the defendant has avoided to do so under one or other pretext. It is contended that the premises was constructed for residential purpose, but it is being used for commercial purpose and that also illegally. On the aforesaid grounds, the plaintiff claimed the relief of possession.

6. The defendant filed written statement to contest the suit. Defendant admitted that plaintiff is owner of property and he was out of country since 2006. He admits that he has entered in to an agreement with the mother of plaintiff, but he has denied that mother had no such authority. He admits that

plaintiff had asked him to vacate the premises. Defendant has contended that the mother of the plaintiff was in search of tenant as the premises was lying vacant and so, the agreement was made in the year 2006 which was of leave and license nature. It is contended that the said agreement was notarized before notary public and witnesses and it was represented to him that the mother of the plaintiff was authorized to execute such document.

7. The defendant has contended that he has not changed the nature of the property and he has carried out the repairs of the building and he had done some white washing and fittings. It is contended that the premises was given for use of educational institution and so, it cannot be said now that the premises was not to be used for commercial purpose. Defendant has denied that that he has made default in making payment of rent. He has contended that there is no cause of action for the suit. It is contended that in view of the conditions of leave and license agreement, the suit is not tenable. He has denied that plaintiff wants to do the business of hospital in the suit premises and he has contended that plaintiff owns the other properties also where he can start his hospital. He has contended that the plaintiff had given power of attorney to his mother and so, it

cannot be said that the mother had no authority. It is contended that the plaintiff wants to sell the building and so, he has filed the present proceeding.

8. The issues were framed at Exh. 41. Before the Trial Court both the sides gave evidence and the evidence is as per the aforesaid pleadings.

9. In the cross examination of the plaintiff, it is brought on the record that after giving possession of the suit property to defendant, the mother of the plaintiff had informed to plaintiff that the property was given by her to defendant for short time as he wanted it for religious purpose, for running a school. In the cross examination, it is brought on the record that he has three properties in Aurangabad like house in Atharva Coloney, Beed bye-pass road, show room, opposite to office of Commissioner of Police, Aurangabad and one plot at Beed bye-pass.

10. The defendant has given evidence on the other properties which plaintiff is having. In the cross examination, defendant has contended that as soon as alternate accommodation is available, he will vacate the premises and they will require atleast two years for the construction of the

school building.

11. Copy of so called agreement of leave and license is at Exh. 56 which is simply notarized document and which is shown to be executed for the period of 36 months. It shows that it was given for use of one educational institution. It shows that it was necessary for plaintiff to give notice of three months before expiry of aforesaid 36 months for directing the licensee to vacate the premises, otherwise the licensee was to continue the possession. The evidence of defendant and plaintiff show that it is not disputed that the mother of plaintiff was not authorized by giving such power of attorney to execute such document. There was no such power of attorney on the date of execution i.e. on 1.6.2006 or 26.6.2006. In view of the aforesaid circumstances, this document could not have been used by the defendant for proving the terms and conditions incorporated in the document.

12. The title of the plaintiff is not disputed and from the evidence, inference is possible that the defendant was occupying the premises simply as a licensee. He was asked to vacate the premises, but he has not vacated the premises. The Trial Court has considered the grounds like bonafide requirement and making alteration also against the defendant. There is

evidence to that effect which needs to be believed. The construction was altered to make it suitable for the school purpose when there was no such permission. On the ground of bonafide requirement also, there is no scope to the defendant to say that the plaintiff can start his business in other properties which are owned by the plaintiff. The description of other properties is sufficient to show that they are not at all suitable for starting the hospital. Further, it is the choice of the owner, licensor or the landlord to chose the premises which is suitable for him for his own business. Thus, there is virtually no defence available to defendant/present appellant. There is no possibility of interference in the decision given by the Trial Court.

13. In the result, the appeal stands dismissed. In view of dismissal of appeal, the application filed for stay does not survive and the same is disposed of accordingly.

[T.V. NALAWADE, J.]

ssc/