

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 58 OF 2008

Raju Varghese Khadarat,
s/o. Varghese Khadarat, 51 years of
age, married, businessman, and
resident of H. No. 143(New) and
(Old) Motivaddo, Majorda,
Salcete, Goa.

..... Appellant

V e r s u s

1. Aleixo Manuel Francisco Rudolf
D' Silva, major, businessman,
married, and his wife,
2. Mrs. Visitacao D' Silva, major,
married, Both residing at H. No. 333,
Godinho Vaddo, Majorda,
Salcete, Goa, and
3. Miss Flora D' Costa,
major of age,
spinster, landlady and r/o.H. No.
143, Motivaddo,, Majorda, Salcete,
Goa. (Since deceased through legal
representatives)
 - (a) Mr. A. Victor Noronha and his
wife
 - (b) Mrs. Judy Noronha,
Both residing at 15, Deans Way,
Edgwars, Middlesex, M. A. 89 NG,
England, U.K.
(Matter stands disposed of
against 3a and 3b in view of
Order dtd. 07.03.2013 passed
by the Id. Registrar(J))
 - (c) Mr. Josepin Noronha and his wife
 - (d) Mrs. Elita Noronha,
Both residing at 82, Alkinso Road,
London E 163 LS.*

..... Respondents

Mr. Ryan Menezes, Advocate for the Appellant.

Mr. S. S. Kakodkar, Advocate for the Respondents.

Coram :- F. M. REIS, J

Date : 1st October, 2015.

ORAL JUDGMENT

Heard Shri Ryan Menezes, learned Counsel appearing for the Appellant and Shri Kakodkar, learned Counsel appearing for the Respondents.

2. The above Appeal came to be admitted by an Order dated 29.08.2012 on the following substantial questions of law :

1. Whether the First Appellate Court could have held that the Agreement dated 01.02.1982 and the Rent receipts produced by the Appellant were not genuine in as much as there is no denial of the signature of the original defendant no.3 on the Agreement as well as the rent receipts ?
2. Whether the findings of the First Appellate Court on the issue of possession is perverse and is given by discarding and ignoring the material documents namely the Letter bearing Declaration dated 06.08.1991, Declaration/Undertaking in the year 1992 by the original defendant no.3, and Letter dated 16.07.1995 ?

3. Shri Ryan Menezes, learned Counsel appearing for the Appellant, in support of the aforesaid questions has pointed out that there is an Agreement executed on 01.02.1982 whereby the disputed premises were given on lease to the Appellant. The learned Counsel further pointed out that there are rent receipts issued from time to time by the original Landlady who is the defendant no. 3 in the suit whereby rents paid by the Appellant were acknowledged. The learned Counsel

further pointed out that in the plaint there is an averment that there was an incident in the year 1995 whereby the Appellant and his family members were forcibly evicted from the disputed premises which resulted in the death of the wife of the Appellant. Learned Counsel further pointed out that there is also a receipt on record of the year 1995 which, inter alia, discloses that rents in respect of the disputed property were in fact paid by the Appellant to the Landlady. Learned Counsel further pointed out that the Lower Appellate Court was not justified to set aside the Judgment on the erroneous consideration that the oral evidence produced by the Respondent discloses that the Appellant was not residing in the disputed premises. Learned Counsel further pointed out that it is well settled that any oral evidence contrary to a written document is not admissible in evidence and, consequently, the Lower Appellate Court was not justified to set aside the Judgment of the learned Trial Court. Learned Counsel further pointed out that the disputed premises were in fact demolished in the year 1995 with the intention to forcefully evict the Appellant from the disputed premises and, consequently, the Appellant is entitled for a Decree and a compensation to the tune of Rs.80,000/- suffered by the Appellant. Learned Counsel has thereafter taken me through the impugned Judgment passed by the Lower Appellate Court and pointed out that the learned judge has misconstrued the evidence on record and has failed to consider that there was conclusive evidence on record to suggest that the Appellant was the tenant of the disputed premises and he was forcefully evicted from the premises. Learned Counsel further pointed out that the Appeal be allowed and the impugned Judgment passed by the Lower Appellate Court be quashed and set aside.

4. On the other hand, Shri Kakodkar, learned Counsel appearing for the Respondents, has pointed out that the fact finding Court has come to the conclusion that the Appellant has failed to establish that they were in possession of the disputed premises. Learned Counsel further pointed out that the alleged document relied upon by the Appellant has not been executed by the Respondents nor by the Landlady as, according to him, the signature therein is not of such person. Learned Counsel has disputed the authenticity of the rent receipts and pointed out that such receipts were not signed by the Landlady. Learned Counsel has thereafter taken me through the letter addressed by the Appellant to the local Panchayat way back in the year 06.08.1991 wherein the Appellant himself has accepted that the roof of the disputed premises collapsed and, as such, he required financial assistance to repair such premises. Learned Counsel as such submits that this itself discloses that the allegation of the Appellant that the disputed premises were demolished by the Respondents in the year 1995, is totally erroneous and the Lower Appellate Court has rightly disbelieved such contention on the part of the Appellant. Learned Counsel further pointed out that even the alleged original receipts have not been produced on record and that the Lower Appellate Court was justified to come to the conclusion that the contents of the said receipts were not established. Learned Counsel has taken me through the impugned Judgment as well as to the finding of the Lower Appellate Court to point out that there is no case made out for any interference in the present Appeal.

5. I have carefully considered the submissions of the learned Counsel appearing for the respective parties. I have also gone through the records. On

perusal of the Judgment passed by the Lower Appellate Court, I find that the fact finding Court has come to the conclusion that the Appellant has failed to establish the nexus between the disputed premises and the Appellant. The learned Counsel points out that the learned Judge has also found that the alleged receipts have not been duly proved. Admittedly, the receipts which are produced were xerox copies and it was incumbent upon the Appellant to produce such original receipts and examine the persons who are conversant with the signature of the landlady considering that in the written statement the Defendant no. 3 who was also a party to the suit, had disputed the signature on the Agreement as well as the rent receipts. As such, it was incumbent upon the Appellant to prove the signature as well as the contents of the said documents. The Lower Appellate Court has also taken note of the fact that though the purported Agreement produced by the Appellant suggests that the subject premises were given for the purpose of residence, nevertheless, the case of the Appellant herein in the deposition before the Court is that the disputed premises were being used for business purpose wherein, according to the Appellant, he was manufacturing cement poles in bulk quantity. Carrying on such business activity in the disputed premises would require permissions from different authorities. Having failed to produce any such permissions, I find that the findings of the Lower Appellate Court to the effect that the Appellant has failed to establish their claim that they were in possession of the suit premises cannot be said to be perverse. Learned Counsel appearing for the Appellant has not brought to my notice any document which has been misread by the Court or any other evidence has been wrongly discarded by the learned Judge. The Lower Appellate court has in fact taken note of the fact that the alleged

Agreement has not been registered and such Agreement is not in accordance with law. Apart from that, admittedly, the Appellant has not produced any electricity bills or water bills etc., to substantiate his claim that they were in possession of the disputed premises as on the date that the alleged incident took place in 1991. Though it is contended by the learned Counsel appearing for the Appellant that during the alleged incident, the wife of the Appellant has expired, there is no material on record to substantiate such claim. Even otherwise, the Appellant has not produced any complaint lodged before the police alleging that the Respondents had forcefully dispossessed the Appellant from the disputed premises. Lower Appellate Court has taken note of the fact that there is material on record to suggest that the Appellant and the family members were in fact residing at per Seraulim and not at Majorda where the disputed premises are located. The Electoral Roll has also to be taken into consideration by the Lower Appellate Court to come to such conclusion. As such, I find that there is no perversity in the findings of the Lower Appellate Court that the Appellant has failed to establish his case that he was in possession of the disputed premises. Hence, considering the findings of the Lower Appellate Court on that count, I find that the substantial questions of law framed by this Court are to be answered against the Appellant.

6. In view of the above, I find no merit in the above Appeal which stands accordingly dismissed with no orders as to costs.

F .M. REIS, J.

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