

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.55 OF 2015

Mrs. Antonia Michelle Abel,
Resident of C/o Mrs. Terezina Gonsalves,
Presently at Kishor Hotel,
Alto Porvorim,
Bardez, Goa 403521.

... Appellant

V e r s u s

Mrs. Angelica L. Fernandes,
Resident of God's Gift Bungalow,
Opposite Dr. Kenny Hospital,
Alto Porvorim, Bardez, Goa.

.... Respondent

Mr. J.P. Mulgaonkar, with Ms. A. Kaisukar, Advocates for the Appellants.

CORAM: C. V. BHADANG, J.
DATE: 10TH SEPTEMBER, 2015.

ORAL ORDER:

The appellant is the original defendant in Regular Civil Suit No.111/2006/E which was filed by the respondent. Incidentally the appellant had raised a counter claim in the suit seeking possession of the suit house. The suit initially filed by the respondent was for injunction restraining the appellant from interfering with the possession of the respondent over the suit house. It so happened that the respondent withdrew the suit and the counter claim was pursued. Eventually the learned Trial Court dismissed the counter

claim by the judgment and order dated 29/4/2015. That was challenged by the appellant in Regular Civil Appeal No.93/2014 before the learned Adhoc District Judge-1 at Panaji. The First Appellate Court has dismissed the appeal by the judgment and order dated 29/4/2015 thereby confirming the order of the learned Civil Judge. That is how the appellant is before this Court.

2. I have heard Mr. Mulgaonkar, the learned counsel appearing for the appellant. With the assistance of the learned counsel, I have perused the record and the impugned judgments.

3. It is submitted by Mr. Mulgaonkar, the learned counsel for the appellant that under an Agreement of Leave and Licence dated 27/2/2006 executed by the respondent, the appellant was put in possession of the suit house. The period of Leave and Licence agreement was from 1/3/2006 till 31/1/2007. It is submitted that during the period for which the Leave and Licence agreement was in force, the respondent issued a notice terminating the licence w.e.f 1/6/2006. It is submitted that the respondent behind the back of the appellant forcibly obtained the possession of the suit house by putting a lock to the disputed house on 2/6/2006. The matter was reported by the appellant to the police. It is submitted that the case made out in the plaint itself would show that the respondent had admitted that she had put a lock to the suit house. Thus it was not necessary for the appellant to have established

that she was forcibly dispossessed. It is submitted that the termination of the licence is also illegal. It is submitted that the Courts below ought to have decreed the suit in the face of the fact that the respondent had obtained forcible possession of the suit house during the currency of the Leave and Licence agreement.

4. A perusal of the appeal memo would show that although the appellant has drawn draft substantial questions of law in para 9 (a) to 9(f), the learned counsel for the appellant in all fairness restricted his submissions saying that the substantial questions of law at para 9(b),(d) and (e) arise in the second appeal.

5. I have considered the circumstances and the submissions made. With the assistance of the learned counsel, I have perused the record and the impugned judgments.

6. A perusal of the counter claim would show that the counter claim was based on the Leave and Licence Agreement dated 27/2/2006. This would be apparent from para 3 of the counter claim.

7. The Trial Court had raised the following issues in the suit:

i) Whether the defendant proves that she is the lawful licensee of an

independent portion of the bungalow consisting of a room with kitchen and bathroom with an independent access?

ii) Whether the defendant proves that the plaintiff forcibly dispossessed the defendant from the independent portion of the bungalow without following the due process of law?

iii) What relief? What order?

The Trial Court answered the issues (i) and (ii) in the negative.

8. At the trial, the appellant examined herself as PW.1 and produced certain documents including a copy of the F.I.R lodged with the Police Station Porvorim. The respondent did not lead any evidence. The learned Trial Court found that the appellant had failed to prove that she was a lawful licensee of an independent portion of the bungalow consisting of a room with kitchen and bathroom with an independent access. The Trial Court also disbelieved that the appellant was forcibly dispossessed from the independent portion of the bungalow, without following due process of law.

9. The First Appellate Court framed a solitary point for determination, as to whether the appellant is entitled to recovery of possession of the suit portion of the bungalow which was given on leave and licence agreement dated 27/2/2006, when the said agreement had expired and admittedly the appellant was dispossessed from the suit portion. The First Appellate Court has found in para 12 of the judgment that admittedly the

period of eleven months for which the Leave and Licence agreement was to be in force has expired and thus there was no subsisting right in the appellant to claim possession of the suit portion by filing a counter claim in January 2010 that is, almost after one year of filing the written statement. The First Appellate Court has also found, and to my mind rightly so that the counter claim was not based on Section 6 of the Specific Relief Act, namely, the recovery of possession based on previous possession. The First Appellate has further found that the appellant, in order to be entitled to recovery of possession, ought to have proved some existing or subsisting right to the suit portion. It has also been found that the very nature of the Leave and Licence agreement including clause 15 thereof would show that it was terminable at any time at the option of the licensor. The First Appellate Court has also found that the decision of this Court in the case of **Sarla Dias Vs. Gauri Shakar reported in AIR 1996 Bombay 68** is distinguishable. The First Appellate Court has ultimately concurred with the view of taken by the Trial Court that after expiry of the Leave and Licence agreement on 31/1/2007, there was no subsisting right in favour of the appellant for seeking relief of recovery of possession.

10. It can thus be seen that the very nature of the Leave and Licence agreement would make it terminable at any time at the option of the licensor. In the present case, according to the respondent, the licence was terminated

w.e.f 1/6/2006. The Trial Court has recorded a finding of fact about the failure of the appellant in establishing that she was a lawful licensee of the independent portion of the bungalow as also of the forcible dispossession. The learned counsel for the appellant had serious quarrel with the finding on issue no.2 for the reason that the respondent in the plaint itself had stated about obtaining of the possession. Even assuming it to be so, the question is whether the appellant can justifiably seek decree for possession, long after expiry of the Leave and Licence agreement. At the cost of repetition it needs to be stated that the counter claim was not in nature of the suit under section 6 of the Specific Relief Act in which case the plaintiff can justifiably seek restoration of the possession based on previous possession. The counter claim was based on the Leave and Licence agreement which had long expired even when the counter claim was filed in the year 2006. In such circumstances, in my considered view the Second Appeal does not involve any substantial question of law. In the result the Second appeal is dismissed.

C. V. BHADANG, J.

AP/-