

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 8 OF 2007

Sociedade Verlekar through
its Administrator Ashok
Roulou Verlekar, Having
Jeweller Shop no. 10, New
Market, Margao.

..... Appellants/Original Pltffs.

V e r s u s

1. Vayshali Jotendra
Sarmalkar, r/o. E/9 Comba,
Margao.
2. Ramesh Vassudev Sarmalkar,
3. Smt. Rama Ramesh Sarmalkar,
Both having office at 11
Gabriel Apartments, Erasmo
Carvalho Street, Margao,
Goa
4. Madan Neurekar,
5. Smt. Suman Madan Neurekar,
Both r/o 131/1+2-Plot no. 4,
Andh., Pune 41107 and also
r/o D wing Pancharatna
Building, New Market,
Margao.
6. Atmaram S. Angle,
7. Smt. Sujata S, Angle,
Both r/o Jaiwant, La
Campal, Near Milk booth
Centre, Panaji.

..... Respondents/Original Defts.

Mr. Guru Shirodkar, Advocate for the Appellant.

Mrs. A. Agni, Senior Advocate with Ms. Kalpa Govenkar, Advocate for the
Respondent nos. 2 and 3.

Coram :- F. M. REIS, J

Date : 9th October, 2015.

ORAL JUDGMENT

Heard Shri Guru Shirodkar, learned Counsel appearing for the Appellant and Mrs. Agni, learned Senior Advocate appearing for the Respondent nos. 2 and 3.

2. The above Appeal came to be admitted by an order dated 13.07.2007, on the following substantial questions of law :

(i) Whether the Plaintiff can claim an amount for wrongful user of the Verandah of the suit property area, parapet and pillar as mesne profits or damages in view of the fact that the defendants had been permanently enjoined from using the said area ?

(ii) Whether he was entitled to recover any amount in the suit for such wrongful user ?

3. I have heard Shri Guru Shirodkar, learned Counsel appearing for the Appellant and Mrs. Agni, learned Senior Counsel appearing for the Respondents, at length. The main dispute is whether the Respondents are liable to pay compensation/mesne profits to the Appellants on account of illegal occupation of a verandah which is appurtenant to the premises leased to the Respondents. The records reveal that the Appellants had filed the suit, inter alia, for an injunction restraining the Respondents from using the premises contrary to the purpose for which the premises were leased out. The Respondents disputed the said claim and

the learned Trial Judge by Judgment dated 30.08.2004, came to the conclusion that the verandah was part of the leased premises. But, however, on account of illegal user of the premises leased including the verandah, a sum of Rs.10,000/- per month was ordered to be paid from March, 2002 until they stop occupying such premises. The Appellants and Respondents filed Appeals before the Lower Appellate Court challenging the said Judgment passed by the learned Trial Judge. Both the Appeals came to be disposed of by the impugned Judgment dated 25.08.2006, whereby the relief of compensation was set aside and a permanent injunction was granted restraining the Respondents from occupying or using the disputed verandah.

4. During the course of the hearing of the above Appeal, Shri Guru Shirodkar, learned Counsel appearing for the Appellant, has pointed out that the Lower Appellate Court was not justified to refuse the payment of mesne profits as, according to him, admittedly, the disputed verandah was illegally used by the Respondents from the year / ²⁰⁰⁴2002 when the Trial Court disposed of the suit upto August, 2006, when the Lower Appellant Court set aside the direction to pay such mesne profits and granted the injunction. The learned Counsel restricts his claim for mesne profits from the year / ²⁰⁰⁴2002 to the date when the Judgment came to be passed by the Lower Appellate Court. Shri Shirodkar, learned Counsel further pointed out that considering the Judgment of the learned Trial Judge, the Appellants are entitled to a sum of Rs.10,000/- per month during the said period or otherwise an inquiry be ordered in terms of Order 20 Rule 12 of the Civil Procedure Code.

Corrections
Carried out
Vide Order
Dated 22.01.16
Passed in CAREV
no. 01/2016.

5. Mrs. Agni, learned Senior Advocate appearing for the Respondents, further disputes the said contention as, according to her, the Respondents have not illegal used such Verandah. Learned Senior Advocate further pointed out that there is no evidence on record adduced by the Respondents to fix the mesne profits as claimed by the Appellant. Learned Senior Advocate further pointed out that unless and until there is cogent evidence to substantiate the alleged claim of the Appellants, the question of directing payment of such amount would not at all be justified. The learned Senior Advocate as such submits that in any event inquiry has to be conducted to assess such mesne profits.

6. Upon hearing the learned Counsel appearing for the respective parties, the contention of Mr. Guru Shirodkar, learned Counsel appearing for the Appellants, to the effect that the Appellant is entitled to receive the amount of Rs.10,000/- per month based on the Judgment of the learned Trial Judge, cannot be accepted. The mesne profits are to be paid on the basis of cogent evidence produced by the party to establish such claim of compensation. In terms of Section 144 and Order 20 of Rule 12 of the Civil Procedure Code, such inquiry on such amount has to be carried out by the learned Trial Judge after hearing the parties and giving them an opportunity to lead evidence in support of such claim. In the present case, no such inquiry was conducted nor ordered by the learned Judge whilst disposing of the Appeals by the Lower Appellate Court. In such circumstances, I find it appropriate to direct the learned Trial Judge to hold an inquiry in terms of Order 20 Rule 12 of the Civil Procedure Code and proceed to

determine the mesne profits and ascertain whether the Appellant is entitled to such mesne profits from the year / 2002 to 2006 after hearing the parties in accordance with law.

7. In view of the above, I pass the following :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The impugned Judgment dated 25.08.2006 passed by the Lower Appellate Court stands modified and the learned Trial Judge is directed to hold an inquiry in terms of Order 20 Rule 12 of the Civil Procedure Code and proceed to determine the mesne profits for the period referred to herein above in respect of the alleged claim for mesne profits of the Appellant with regard the disputed Verandah, after hearing the parties in accordance with law
- (iii) Appeal stands disposed of accordingly.
- (iv) The parties are directed to appear before the learned Trial Judge on 30.11.2015.

F .M. REIS, J.

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Corrections
Carried out
Vide Order
Dated 22.01.16
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