

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.482 OF 2014
WITH
CIVIL APPLICATION NO.1118 OF 2014

Gangabai w/o. Bulbhim Bandgar ... Appellant
Vs.
Basappa Rukamanna Kannikar by legal heirs
Chandrabai Basappa Kannikar and others ... Respondents

Mr. Samir Kumbhakoni for Appellant.
Mr. Imtiaz M. Khairdi for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MAY 06, 2015

ORDER :

Heard Mr. Kumbhakoni, learned Counsel for appellant and Mr. Khairdi, learned Counsel for respondents at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the obstructionist has challenged the judgment and decree dated 24.11.1998 passed by the learned VI Joint Civil Judge Senior Division, Solapur below exhibit-28 in Regular Darkhast No.79 of 1997 as also the judgment and decree dated 28.04.2014 passed by the learned District Judge-2, Solapur in Regular Civil Appeal No.499 of 1998. By these orders, the Courts below dismissed the application exhibit-28 filed by the appellant, hereinafter be referred to as obstructionist, under Order XXI, Rule 97 C.P.C.

3. In support of this Appeal, Mr. Kumbhakoni strenuously contended that Anusayabai was the tenant in respect of T. P. Scheme No.-I, F. P. No. 12, Telangi Pachcha Peth, Solapur (for short 'suit premises'). She was not made party in Regular Civil Suit No.252 of

1986 instituted by respondent No.1, hereinafter be referred to as the 'decree-holder'. Maruti Waghmode (husband of Indirabai, one of the daughters of Anusayabai), son-in-law of Anusayabai was the manager of the business. He submitted that Anusayabai had made a Will on 03.12.1962. She died on 16.05.1985. After her death, the tenancy rights were inherited by her daughters Indirabai, Gangabai and Chandrabhagabai. Chandrabhagabai died intestate. Mr. Kumbhakoni invited my attention to the finding recorded by the learned trial Judge in paragraphs 7 to 10. He also invited my attention to application exhibit-28 filed by the obstructionist under Order XXI, Rule 97 C.P.C as also the judgment of the learned District Judge. He submitted that the Courts below committed serious error in holding that Maruti Waghmode was the tenant and not Anusayabai. The Courts below committed error in holding that obstructionist did not produce any evidence on record to indicate that she is in possession of the suit premises. For all these reasons, he submitted that Appeal requires consideration as it raises substantial questions of law.

4. On the other hand, Mr. Khairdi supported the impugned orders. He submitted that the Second Appeal is abuse of process of court as also abuse of process of law. Decree-holder instituted Regular Civil Suit No.252 of 1986 against Maruti Waghmode. The learned trial Judge decreed the Suit on 28.11.1991. Aggrieved by that decision, judgment-debtor Maruti preferred Civil Appeal No.357 of 1991. Appeal was dismissed on 26.03.1996. Aggrieved by these decisions, legal representatives of judgment-debtor Maruti Waghmode instituted Writ Petition No.3177 of 1996 in this Court. By order dated 25.06.1996, Petition was summarily dismissed. While dismissing the Petition, this Court directed that decree for possession shall not be executed till 31.01.1997 and undertaking shall be filed by the petitioners therein to

vacate by 31.01.1997, within 2 weeks. He submitted that petitioners did not file undertaking within the stipulated time as per the Court's order.

5. Mr. Khairdi submitted that the Courts below, after appreciating the evidence on record, have concurrently held that the obstructionist has no right, title and interest in the suit premises and the objections are raised only with a view of delaying handing over possession since 1997. He further submitted that petitioners therein have made this Court to believe that subject to filing undertaking, they will vacate the suit premises by 31.01.1997. However, undertaking was not given though representation was made before this Court. They have set up obstructionist. He, therefore, submitted that this is a fit case for issuing notice of contempt against the petitioners in Writ Petition No.3177 of 1996 even in the absence of undertaking as their conduct is found to be interfering in due course of justice. On one hand, petitioners therein have not handed over possession and on the other, one of the daughters (sister of petitioner Indirabai) has filed application under Order XXI, Rule 97 so as to delay handing over possession. Mr. Khairdi further submitted that the learned trial Judge has observed in paragraph 5 that there is some tampering with the record of the Court, and therefore, this is a fit case for initiating appropriate proceedings against the obstructionist.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The obstructionist has claimed that Anusayabai was the tenant in the suit premises. After her death on 16.05.1985, the obstructionist and her other 2 sisters inherited tenancy rights. It is not possible to accept this submission. The learned trial Judge, after considering the evidence on record and in particular evidence of P.W.1 Gangabai, has

observed that during her evidence, P.W.1 Gangabai (obstructionist) did not depose that Anusayabai was a tenant in the suit premises and that the original owner Abdul Rajak Jambhai had let out suit premises to Anusayabai on monthly rent. In application at exhibit-28 and affidavit at exhibit-28A, it was asserted that Anusaya and Maruti conducted the business jointly till 1985. The learned trial Judge recorded that Gangabai though stated that she is in possession of the suit premises, did not produce single document showing that she ever resided or conducted business in the suit premises, though in the cross-examination obstructionist deposed that after demise of Anusaya, she started looking after business of lime mortar. In the application at exhibit-28 and affidavit at exhibit-28A, it was asserted that Anusayabai and Maruti Waghmode were carrying on business jointly till 1985. I have perused the application exhibit-28 filed by the obstructionist under Order XXI, Rule 97 C.P.C. In that application, nowhere obstructionist has stated that she was carrying on business at the time of death of Anusayabai. I, therefore, do not find that the learned trial Judge committed any error in observing that the obstructionist failed to establish that she is in possession of the suit premises. The learned trial Judge also recorded a finding in paragraph 7 to the effect that though the obstructionist in her cross-examination stated that she possesses documents to show that she is in possession of the suit premises, she did not produce any document to prove the same. She admitted that no Shop Act Licence was ever taken in her name for carrying on the business in the lime mortar. Obstructionist failed to produce ration card and voters list to substantiate that she was residing in the suit premises. In fact, she admitted that she did not set out in the objections that she resided or carried on business in the suit premises. In paragraph 8, the learned trial Judge recorded that Maruti Waghmode was carrying on business along with Anusaya. She died on 16.05.1985. Maruti, therefore, became tenant in view of Section

5(11)(c)(ii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). The learned trial Judge thereafter considered a Will dated 03.12.1962 executed by Anusayabai. Obstructionist admitted under the Will, she was given share in the super structure standing on the suit premises and business of lime mortar. In other words, Anusayabai did not bequeath tenancy rights in favour of the obstructionist and other daughters. This is on the presumption that Anusayabai was a tenant of the suit premises. The findings recorded by the learned trial Judge were confirmed by the learned District Judge.

7. After considering the material on record, I do not find that the Courts below committed any error in dismissing the application, exhibit-28. Obstructionist was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based upon no evidence or that they are contrary to evidence on record. No question of law much less any substantial question of law arises in this Appeal. Hence, Second Appeal fails and the same is dismissed. In view of the dismissal of the Second Appeal, nothing survives in Civil Application No.1118 of 2014 and the same is disposed of as such.

8. During the course of hearing of this Appeal, I suggested to Mr. Kumbhakoni to consider whether he is pressing the Second Appeal as prima facie I am of the opinion that petitioners in Writ Petition No.3177 of 1996 are in contempt of this Court as they represented to the Court that subject to their filing undertaking, they will be given time upto 31.01.1997 to vacate the suit premises. Mr. Kumbhakoni, upon taking instructions, submitted that he has instructions to press this Appeal.

9. It is necessary to consider the decision of the Apex Court in the case of *Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De*

Sequeria (Dead) through L.Rs, AIR 2012 Supreme Court 1727. The Apex Court observed in paragraphs 84 and 85 as under:-

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in *Ramrameshwari Devi and Ors.* (AIR 2011 SC (Civ) 1776:2011 AIR SCW 4000) (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

Grant or refusal of an injunction.”

10. In paragraph 85, the Apex Court has considered its earlier decision in *Ramrameshwari Devi* and observed that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants.

11. In the case of *Rama Narang Vs. Ramesh Narang*, (2006) 11 SCC 114, it has been held by the Apex Court that even in the absence of undertaking in appropriate cases, defiance even of a compromise decree

may be contemptuous if the conduct is found to be interfering in the due course of justice. It has also been held in the case of *Santanu Chaudhuri Vs. Subir Ghose*, (2007) 10 SCC 114 that even without undertaking, a contempt may be made out the Court has acted on the basis of a representation of a party. In the present case, Writ Petition No.3177 of 1996 instituted by legal representatives of Maruti Waghmode was dismissed by this Court on 25.06.1996. This Court directed that decree of possession shall not be executed till 31.01.1997 and that undertaking was to be filed by the petitioners to vacate by 31.01.1997 within 2 weeks. Perusal of the endorsement made by the Registry shows that petitioners therein did not file undertaking within stipulated time as per the Court's order.

12. In view thereof, issue notice to petitioners No. 1(A) to (F) in Writ Petition No.3177 of 1996 as to why contempt proceedings should not be initiated against them, returnable on 18.06.2015. Details of the said petitioners are as follows:

- (A) Indirabai w/o Maruti Waghmode
- (B) Raju @ Rukhmaji Maruti Waghmode
- (C) Dnyaneshwar Maruti Waghmode
- (D) Nagnath Maruti Waghmode
- (E) Krishna Maruti Waghmode
- (F) Revansiddha Maruti Waghmode

Nos.1(A) to (E) residing at 56/12, Telangi Pachha Peth, Solapur.

No.1(F) residing at Deeplaxmi Housing Society, Block No.7A, Shantinagar, Dombivali, District - Thane.

13. For the time being, presence of contemnors is dispensed with. The Courts below also have found that there was interpolation in proceedings. In view thereof, fall for R & P of exhibit-28 and exhibit-28A filed by the appellant in Regular Darkhast No.79 of 1997 so as to consider taking appropriate action against the obstructionist.

(R. G. KETKAR, J.)