

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc. Civil Application No.481 of 2014

In

Second Appeal No.395 of 2002

(Jeevan Ganpat Puri (Dead) through LR. Sau. Manda w/o Jeevan Puri and others
v. Vinayak Daulat Watkar (Dead) through LR. Smt. Kusumbai Vinayak Watkar
and another)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's order

Court's or Judge's orders

Shri S.P. Kshirsagar, Advocate for Applicants/Original Respondents.
Shri M. Anilkumar, Advocate for Non-Applicants/Original Appellants.

Coram : R.K. Deshpande, J.

Date : 6th October, 2015

1. Regular Civil Suit No.2419 of 1992 was filed for ejectment, possession and recovery of damages against the tenant invoking the ordinary jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure. Issue No.2 framed by the Trial Court for determination reads as under :

“2. Whether plaintiff proves that he allowed to use suit property temporarily as licensee?”

The suit was decreed by the Trial Court on 23-10-1997 for eviction and possession.

2. Regular Civil Appeal No.601 of 1997, which was filed by the tenant, was tried by the 2nd Additional District Judge, Nagpur. Points

No.2 and 3 framed by the lower Appellate Court for determination read as under :

“2. Whether the suit transaction is of purely licence or lease?”

“3. Whether the Civil Court has jurisdiction to deal with the matter between the licensor or licensee when Small Causes Court is existed?”

The lower Appellate allowed the appeal on 10-7-2002 and set aside the decree passed by the Trial Court. Hence, Second Appeal No.395 of 2002 was preferred by the landlord.

3. On 27-1-2014, this Court (Shri A.P. Bhangale, as he then was) allowed the second appeal and set aside the judgment of the lower Appellate Court and restored the decree passed by the Trial Court. In para 8 of the judgment under review, it is observed by this Court as under :

“8) The defendant cannot force the plaintiff to go to a forum where the plaintiff cannot go on the basis of his averments in the plaint that the defendant is a trespasser who has refused to vacate despite notice to vacate. Jurisdiction of the Court has to be determined on the basis of averments in the plaint, taking them to be true and not on the basis of the written statement.

Ordinary Civil Court has jurisdiction irrespective of the defence taken in the written statement. Thus, the plaintiff alleging that the defendant is a trespasser can approach an ordinary Civil Court with a suit to recover possession. If plaintiff succeeds by proving his case as stated in the plaint, irrespective of the contention pleaded in written statement, the suit of the plaintiff is bound to be decreed but, of course, in such a case, if the defendant comes out with a contention in defence, which is found reliable and acceptable, the plaintiff may be non-suited by an order of dismissal of the suit. Jurisdiction of the ordinary Civil Court to entertain the Civil suit is not barred in such a case. In the present case, the defendant was unable to prove that he was a tenant or a licensee. Hence there was no any illegality or irrationality in the Judgment and Order of the trial court, granting decree in favour of the plaintiff. The first Appellate Judge had no justification at all to overturn or reverse the Judgment and decree passed by the trial Court as merely payment of electricity bills by the occupant cannot create status of tenancy or licensee protected under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.”

4. In the aforesaid judgment, it has been held that the applicant-defendant was unable to prove that he was a tenant or a licensee. Hence, there was no illegality or irrationality in the judgment and order of the Trial Court granting a decree in favour of the non-applicant/plaintiff. On the basis of the aforesaid findings, this Court has set aside the judgment delivered by the lower Appellate

Court and restored the decree passed by the Trial Court.

5. In the application for review, a specific statement is made in para 3 the decision of the Full Bench of this Court in the case of *Prabhudas Damodar Kotecha and others v. Manhabala Jeram Damodar and another*, reported in 2007(5) *Mh.L.J.* 341, was relied upon to urge that the jurisdiction of the Civil Court was clearly barred and the suit was triable by the Court of Small Causes only. This decision has not been considered in the judgment under review although it was cited.

6. In the aforesaid judgment, this Court has proceeded on misconception of facts that the case was only of recovery of possession from the trespasser. From the issues framed by the Trial Court and the points framed by the lower Appellate Court for determination, which are reproduced above, it is apparent that the case of the non-applicant/plaintiff was that the applicant-defendant was a gratuitous licensee. With this averment, the plaintiff had invoked the ordinary jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure.

7. The learned counsel for the non-applicants does not dispute the factual aspect that the decision of the Full Bench of this Court, referred to above, was cited before this Court and it has not been dealt with. He also does not dispute that in terms of the decision of the Full Bench of this Court, which has been confirmed by the Apex Court in its decision in the case of *Prabhudas Damodar Kotecha and others v. Manhabala Jeram Damodar and another*, reported in *AIR 2013 SC 2959*, the question is no longer *res integra* that the suit

between the licensor and the licensee for eviction of a gratuitous licensee can only be tried by the Court of Small Causes and the ordinary jurisdiction of the Civil Court is barred. In view of this, the judgment and order passed by this Court on 27-1-2014 in Second Appeal No.395 of 2002 needs to be reviewed.

8. In the result, the review application is allowed. The judgment and order dated 27-1-2014 delivered by this Court in Second Appeal No.395 of 2002 is reviewed and the second appeal is dismissed. This, however, shall not prevent the non-applicants from invoking the jurisdiction of the Court of Small Causes in accordance with law.

9. The learned counsel for the applicant-licensees makes a statement that regular payment of rent at the rate of Rs.275/- shall be made. This undertaking given shall bind the applicants.

Judge.

Lanjewar