

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 74 OF 2015

SHRI CLEMENT D'COSTA AND ANR., ... Appellants
Versus
SHRI VASSUDEV LAXAMAN ADPAIKAR AND ... Respondents
ANR.,

Shri Gajendra Usgaonkar, Advocate for the Appellants.
Shri R. G. Ramani, Advocate for Respondent No.1.

Coram:- F. M. REIS, J.

Date:- 6th May, 2016

ORAL ORDER:

Heard Shri G. Usgaonkar, the learned Counsel appearing for the appellants and Shri R.G. Ramani, the learned Counsel appearing for the respondent no.1.

2. The above appeal challenges the concurrent findings of fact arrived at by both the Courts below.

3. Shri G. Usgaonkar, the learned Counsel appearing for the appellants has pointed out that the Courts below have misconstrued the documents on record specially the vouchers allegedly showing payments to the deceased/original plaintiff no.1 which according to him were obtained fraudulently. The learned Counsel further points out that the amounts were paid even after the possession was given to the respondents which according to him clearly suggest that at the

time of taking possession all installments payable by the respondents had not been effected. The learned Counsel has thereafter taken me through the judgments passed by the Courts below to point out that both the Courts below have misconstrued the said receipts and accepted the veracity of the said documents without examining that such receipts were obtained fraudulently and by using undue influence. The learned Counsel has taken me through the receipts to point out that the instalments which have been accepted by the appellants were paid by cheque whereas the disputed amounts were in respect of the voucher dated 24/01/1998 for a sum of Rs.1.00 lakh, voucher for Rs.22,319.10 dated 4/02/1998 with regard to the payment towards shutters as well as the voucher dated 7/07/1998 for a sum of Rs.60,910/-, voucher dated 25/07/2000 for Rs.9,487.50, voucher dated 28/08/2003 for Rs.1,05,333/-. The learned Counsel, as such points out that there are substantial questions of law which arise in the above appeal.

4. On the other hand, Shri R.G. Ramani, the learned Counsel appearing for the respondent no.1 has pointed out that both the Courts below upon appreciation of evidence on record and upon examination of the aforesaid vouchers has come to the conclusion that no amounts are due to the respondents. The learned Counsel further points out that the occupancy certificate in respect of the subject premises was obtained in August, 2003 and the possession thereof was given to the respondents on 2/09/2003. The learned

Counsel further points out that both the Courts below have concurrently found that the possession was given to the respondents on 2/09/2003. The learned Counsel, as such, points out that the appeal be rejected.

5. I have considered the submissions of the learned Counsels and have also gone through the records. On perusal of the judgment of the learned Trial Court, I find that the learned Trial Judge upon appreciating the evidence on record has come to the conclusion that the possession was delivered on 2/09/2003. The learned Trial Judge has also rejected the contention that the documents were obtained by undue influence and misrepresentation. The learned lower Appellate Court has also endorsed the finding of the learned Trial Judge. Admittedly, the signatures on the vouchers have not been disputed by the original plaintiff. It is sought to be contended that the vouchers were obtained by misrepresentation and undue influence although the Courts below have rejected such contentions of the appellants. Apart from that, the very fact that the possession was delivered by the appellants to the respondents on 2/09/2003 after obtaining the occupancy certificate would itself suggest that as on that date no dues were payable by the respondents to the appellants. Besides that whilst delivering such possession there was no document or any material produced on record to point out that such possession was delivered subject to payment of any amounts to the appellants. The suit was filed only in the year 2008 though it is admitted possession

that possession was delivered on 2/09/2003. Though it is pointed out by the learned Counsel appearing for the appellants that the respondents were permitted to do internal work in the year 1998, I find that, that by itself would not suggest that any dues were payable to the appellants in view of the fact that the occupancy certificate was obtained only on 28/08/2003 and the possession was delivered to the respondents on 2/09/2003. The concurrent findings of fact arrived by both the Courts below upon appreciating evidence on record cannot be reappreciated by this Court in Second Appeal under Section 100 of the Civil Procedure Code unless any perversity is established. The learned Counsel appearing for the appellants was unable to point out that there was misreading of evidence or that any crucial documents have not been considered by the Courts below. On perusal of the proposed substantial questions, I find that all the proposed substantial questions would entail reappreciation of evidence which exercise cannot be carried out in the Second Appeal under Section 100 of the Civil Procedure Code. The concurrent findings of fact cannot be re-appreciated by this Court as there is no perversity in the finding arrived at by both the Courts below. Hence, the appeal stands rejected.

F. M. REIS, J.

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