

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 29 OF 2016.

Dr. Lilly Sequeira, Paediatric Doctor,
Wife of Mr. Ajit Sukhija, Residing at
Campal, Panaji, Goa.

..... Appellant.

Versus

Aires Inaudino Purificacao De
Basilio Dias, 80 years of age,
Resident of House No.30, Rua De
Ormuz, Opp. Azad Maidan, Panaji-
Goa.

..... Respondent.

Shri S. D. Lotlikar, Senior Advocate with Ms. Prachi Gohil,
Advocate for the appellant.

Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the respondent.

Coram:- NUTAN D. SARDESSAI,J.

Reserved on: -1st July, 2016.

Pronounced on:- 4th August, 2016.

JUDGMENT

Heard learned Counsels appearing for the respective
parties.

2. Admit.

3. Shri T. Ghanekar, learned Advocate waives notice on behalf of the respondent.

4. This is an appeal at the instance of the original defendant aggrieved by an order of the Ad-hoc Additional Senior Civil Judge, pursuant to which he had secured the plaintiff with an order of injunction to restrain her from carrying out any construction/repairs, renovation or structural alteration to the suit premises or from putting a lock to the collapsible gate and in the alternative directing her to handover one set of keys of the said lock to the plaintiff so that he could open the said lock as per his convenience. The parties would be referred to in their original status for brevity's sake hereinafter.

5. Shri S. D. Lotlikar, learned Senior Counsel came to be heard on behalf of the defendant who submitted at the outset that the relief no.1 was innocuous while the relief no.2 granted in favour of the plaintiff was relevant inasmuch as the learned Ad-hoc Addl. Senior Civil Judge had virtually secured the plaintiff with the mandatory relief of injunction qua putting of the lock

when no such relief was claimed in the terms worded by the trial Court. The plaintiff had approached the Court with unclean hands, suppression of the material facts and there was delay and laches. A mandatory injunction could be granted in exceptional circumstances and the plaintiff had not carved out any such case to be secured with the mandatory relief. The plaintiff had also not impleaded the person who had inducted the defendant in one of the rooms in the suit premises. The suit as filed was misconceived.

6. Shri S. D. Lotlikar, learned Senior Counsel on behalf of the defendant submitted that she was in occupation since the last more than 40 years and therefore she could not be jeopardized by the order of injunction as granted in the plaintiff's favour. The plaintiff had no right to curtail the claim of the defendant. The defendant was in lawful occupation since more than 40 years, a doctor by profession and there was no singular dispute that there were expensive equipments in the premises in her occupation. The plaintiff did not have any ostensible business in the suit premises. The exercise of the discretion by the learned Trial Court was patently arbitrary and capricious.

Besides, the plaintiff had to make out a strong prima facie case to be secured with the relief of mandatory injunction at the interlocutory stage and on this count, the order as passed had to be vacated.

7. Shri S. M. Usgaonkar, learned Senior Counsel for the plaintiff came to be heard who adverted to the judgment in **Wander Ltd. Vs. Antox India Pvt Ltd.,[1990 supp(1) SCC 727** and posed a question whether the Appellate Court would interfere with the impugned order only because a different view was possible in the matter. He adverted to the impugned order and contended at the outset that it was incorrect to urge that the trial Court had not considered the three principles governing the grant of injunction. He adverted to the Lease Deed forming a part of the paper book and submitted that the defendant had no larger interest than the tenant who had been inducted in the suit premises. He adverted to the Deed of Surrender executed by one of the tenants dated 9.11.2013, also adverted to the pleadings and submitted that the defendant had failed to show any prejudice being caused to her by the grant of the alternative relief. The trial Court had considered the equities and granted

the relief. He relied in **Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira**,[(2012)5 SCC 370 and submitted that the defendant on her own admission was not a tenant nor a successor in interest of the tenant and therefore had no right to obstruct the plaintiff who was admittedly the owner of the suit premises. There was no infirmity in the impugned order and no case for interference with the order in the appeal.

8. Shri S. D. Lotlikar, learned Senior Counsel for the defendant submitted that the plaintiff had not pleaded that the defendant was an occupant of the suit building. There was a categorical statement that there were several doctors in the suit premises pursuant to the lease deed of 1972. A lock was put to the collapsible gate since the last more than 40 years and it was a false averment on behalf of the plaintiff that the defendant had illegally locked the premises. The judgment in **Maria Sequiera (supra)**, was clearly distinguishable and was not applicable to the case at hand and on this count the injunction had to be discharged.

9. The plaintiff had carved a case that the original first floor of the building in question was used for his residence till he opted to shift to a different premise in 1970 and thereafter it had remained vacant for sometime. There was a Lease Deed in March, 1972 pursuant to which three doctors namely Dr. Wilfred D'Souza, Dr. George Fernandes and Dr. Honorato D'Souza were granted a lease of the first floor of the building to do the activities of the medical consultations being the suit premises comprising of the four rooms. Two of such rooms were occupied by Dr. Wilfred D'Souza and Dr. George Fernandes separately, one large room was converted into smaller cubicles by erecting wooden partitions and one of such cubicle was occupied by Dr. Honorato D'Souza. These doctors as the tenants had brought some other doctors who were **permitted** to occupy the other cubicles and the defendant was occupying one such cubicle in the suit premises upon being brought by the original tenants. In the face of these clear pleadings, there is no basis in the contention of Shri S. D. Lotlikar, learned Senior Counsel that the plaintiff had not carved out what was the role of the defendant qua the suit premises. On the contrary it was for the defendant to specify in what capacity she was occupying one of the cubicles

in the suit premises when admittedly she was not a tenant of the plaintiff.

10. It was further the case of the plaintiff that Dr. George Fernandes and Dr. Honorato D'Souza had expired and the room occupied by Dr. George Fernandes was now in possession of his heirs while the third tenant Dr. Wilfred D'souza had surrendered the lease of the room in his occupation to the plaintiff in November, 2013 by a Deed of Surrender and since then the plaintiff was in lawful and physical possession of the said room. It was his case that the defendant had no right to the cubicle occupied by her and more particularly the remaining part of the suit premises and yet she had tried to interfere by doing structural changes to the suit premises including putting of a lock to the collapsible gate attached to the staircase on the ground floor of the suit premises causing obstruction to his access. On this premise and anticipating that the defendant would invade his proprietary rights, the plaintiff had filed a suit and sought for the relief of injunction not only to restrain her from carrying out the construction activities or structural changes but also from locking the collapsible gate. It was

therefore not open to the defendant to canvass that no relief was carved by the plaintiff vis-a-vis the lock to the collapsible gate leading to the suit premises.

11. The defendant had instead alleged that the plaintiffs had approached the Court with unclean hands, by the suppression of material facts and non joinder of the necessary parties. She had started her clinic as a paediatrician in one of the rooms of the suit premises and was in lawful possession and enjoyment since April, 1972. She had questioned the Deed of Surrender of the lease by Dr. Wilfred D'Souza to question the plaintiff's right and entitlement to the room forming a part of the suit premises on the premise that it was a joint lease in respect of the entire suit premises. It was further the case of the defendant that being in lawful occupation of a part of the suit premises, she was entitled to a safe access to the portion in her possession and to take all the steps necessary for the entire security of the premises in her occupation.

12. It was further the case of the defendant that the legal representatives of one of the joint tenants Dr. George

Fernandes were entitled to exercise their right as tenants in respect of the entire premises. The plaintiff had no right to enter any part of the suit premises without specific consent and with permission of all the persons in occupation thereof nor could he interfere with any part of the suit premises under the cover of the Deed of Surrender by Dr. Wilfred D'Souza. The staircase leading to the suit premises was always provided with a metal gate which was closed and locked for the purpose of security. The defendant however, admitted that Dr. Wilfred D'Souza had handed over the keys of the portion in his occupation to the plaintiff but yet denied his right to the entire suit premises against the consent of the joint statutory tenants who had not been made parties to the suit. The lock was put on the collapsible gate as always done and being the joint tenant of the suit premises. The plaintiff therefore had no right to claim the relief and which otherwise suffered from gross delay and laches.

13. It is borne out from the pleadings and not particularly in dispute at the instance of the parties to the proceedings that the leased premises consisted of four rooms on the first floor which were tenanted to Dr. Wilfred D'Souza, Dr.

George Fernandes and Dr. Honorato D'Souza. It was also not in dispute that two rooms were occupied by Dr. Wilfred D'Souza and Dr. George Fernandes. It was also not in dispute that Dr. George Fernandes had expired and the room in his possession continued in the occupation of his legal representatives while Dr. Honarato D'Souza had expired but was not survived by any legal representative. Dr. Wilfred D'Souza had executed the Deed of Surrender in 2013 and irrespective of the approach of the defendant, the plaintiff came in possession of one rooms of the suit premises upon the surrender, second being on the death of Dr. Honarato D'Souza.

14. Accepting the arguments of the defendant that the Lease Agreement was jointly between the plaintiff and the three doctors in respect of the suit premises, it was a matter inter se between them and with which the defendant had no truck whatsoever. There was also no privity of contract between the plaintiff and the defendant, the defendant having gained the access to the one cubicle in one of the rooms of the suit premises through Dr. Honarato D'Souza. Even assuming for the sake of arguments that the surrender of one joint tenant without

the consent of the other was not permissible, it was not within the domain of the defendant to question such a transaction and more particularly the possession of the plaintiff to one of the suit premises.

15. Much was said on behalf of the defendant about the joint tenancy of the suit premises and the right and the interest of the other tenants being affected but there was no supporting affidavit apparent of any of such occupants to buttress her case. To all intents and purposes it was also not shown from her pleadings that any of the legal representatives of Dr. George Fernandes were actually occupying the room and/or were conducting any affairs therein. There is no basis whatsoever in the pleadings of the defendant that the plaintiff had approached the Court with unclean hands, by suppression of the material facts and or that the application was defeated by delay and laches. It was also farfetched for the defendant to allege that the plaintiff had not indicated who had inducted the defendant in one of the suit premises. It was rather for the defendant to show how she had come about to be put in occupation of one of the cubicles in the suit premises though it is another matter that

the plaintiff had not disputed her presence in one of the suit premises and over a period of time.

16. Contrary to the contention on behalf of the defendant that there were expensive equipments in the cubicle in her occupation, no material too were brought on record by the defendant. Even if it is assumed that being a paediatrician she had expensive equipment in a cubicle of the suit premises, it was also not her case that the plaintiff was interfering in the premiss in her occupation. It therefore cannot be heard on behalf of the defendant that the plaintiff had no reason to be in the suit premises barring the cubicle in the occupation of the defendant and the room in the occupation of the legal representatives of the Dr. George Fernandes; the room in occupation of Dr. Honorato D'Souza being in his possession on his demise and that of Dr. Wilfred D'Souza being surrendered in his favour. He was not a third party but the owner of the premises and whose right to visit the suit premises could not be questioned on any legal premise.

17. Shri S. M. Usgaonkar, learned Senior Counsel had

therefore rightly submitted that the defendant who had come to be inducted in one of the cubicles at the instance of one of the tenants had no larger interest than the tenant himself. There is also no force in his contention on her own showing that the defendant was not a tenant and also not a successor of the tenant and thus she had no right to obstruct the plaintiff who was rightly the owner of the suit premises.

18. **Maria Margarida Sequeira Fernandes** (supra), claimed that she was the sole owner and in exclusive possession of the suit property unlike the respondent, her brother who was given the suit property to take care as the caretaker but who had kept the appellant, his own sister out of her suit property for about two decades by suppressing the relevant material and pertinent information from the Court and abusing the process of law. It was held by the Apex Court that (1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such a person would not acquire any right or interest in the said property. (2) A caretaker, watchman or servant can never acquire interest in the property irrespective of his long

possession. The caretaker or servant has to give possession forthwith on demand. (3) The Courts are not justified to protect the possession of a caretaker, servant or any person who was allowed to live in the premises for sometime either as a friend, relative, caretaker or as a servant. (4) The protection of the Court can only be granted or extended to the person who has valid, subsisting Rent Agreement or Lease Agreement or License Agreement in his favour. (5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

19. The trial Court had examined the case of the plaintiff and the defendant in depth including the contention of Shri S. D. Lotlikar, learned Senior Counsel for the defendant that the relief claimed was in disguise of the temporary mandatory injunction. It is not as if the trial Court was not seized of the plea raised by the plaintiff and the defendant in support of their case. Rather the learned Trial Judge had rightly recorded that the defendant had not disclosed anywhere in her written statement the capacity in which she was occupying one of the rooms in the

suit premises but had only disclosed that she had started her clinic in one of the rooms and was in occupation since April, 1972.

20. The learned Trial Court had also taken stock of the fact about the locus standi of the defendant to challenge the surrender of the lease made by Dr. Wilfred D'Souza in favour of the plaintiff as well as the right of the plaintiff to enter the suit premises in his capacity as an owner and also by virtue of the right accrued in his favour consequent to the surrender of the lease by Dr. Wilfred D'Souza. It is not as if the plaintiff was stepping into the shoes of the tenant from that of an owner but had rightly come in possession thereof as its owner. The learned Trial Court further for that matter had also considered the contention of Shri Lotlikar, learned Senior Counsel for the defendant that one joint tenant could not surrender the joint tenancy. The Trial Court for that matter had concluded that the suit premises were leased to the three doctors in common and it was not a joint tenancy. For that matter he had also held and rightly so that the original leases were in possession of separate rooms and that the defendant had come in possession of a

cubicle in the suit premises through one of the doctors and that the premises were not enjoyed in common or jointly. In that context the learned Trial Court had held that one of the co-tenants could surrender his right in favour of the owner and it was not defeating the right of the plaintiff in any manner whatsoever.

21. The defendant had raised a plea that a lock was put to the collapsible gate over a period of time and that was to protect the records and medical equipments and other accessories kept in the suit premises. The learned Trial Judge was seized of the fact that the plaintiff who was the original owner of the suit premises including the building could not be denied any access thereto and there was no basis in the contention on behalf of the defendant that he had no legal right of access to the premises. The learned Trial Judge was seized of the fact that the defendant as an occupier of one of the cubicles of the suit premises could not carry out construction/repairs or renovation or structural alteration to the premises without the consent of the plaintiff. For that matter he had also considered the possession vis-a-vis the duties of the landlord to maintain

the premises and the remedy available to the tenant in case the landlord did not do so. It is not as if the trial Court was oblivious of the fact that the defendant could not be ousted from the suit premises but at the same time she had no right to act in so far as the suit premises were concerned barring the lock being put to the collapsible gate.

22. Moreover, at the cost of repetition, the plaintiff had not only claimed to restrain the defendant from interfering with the suit property including carrying out any changes thereto but also from locking the collapsible gate. The trial Court had rather considering the pleadings taken a pragmatic view and granted the relief in the alternative inasmuch as he had permitted putting of a lock to the collapsible gate and to interfere with the use of the suit premises apart from its security and had directed the defendant to hand over a key to the plaintiff to gain access to the premises at his convenience. No fault whatsoever could be found with the findings recorded by the learned Trial Court on the touchstone of the principles culled out in **Wander Ltd** (supra). The trial Court had properly weighed the probabilities, apart from the factum of irreparable loss and injury which would

occasion to the parties and passed the order as he did which does not call for any interference in appeal.

23. In the result, i pass the following:-

ORDER

The appeal is dismissed and the impugned order restraining the defendant, her servant, agent, representatives from carrying any construction, repairs, renovation or any structural alteration to the suit premises including its roofing coupled with a condition to hand over a set of key of the lock to the plaintiff is confirmed.

There shall be no order as to costs.

NUTAN D. SARDESSAI J.

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