

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 136 OF 2011

SMT. GANGA SHANU SAWANT AND ANR., ... Appellants
Versus
SMT. KAMALABAI SADASHIV TIRODKAR
AND 17 ORS., ... Respondents

Shri Amey Kakodkar, Advocate for the Appellants.
Shri S.G. Desai, Senior Advocate with Shri A. Gaonkar,
Advocate for Respondents No.2(a) & 2(b), 4 to 15, 17 & 18.
Shri D. Pangam, Advocate for Respondent No.16.

Coram:- SMT. R. P. SONDURBALDOTA, J.

Date:- 1st December, 2016

ORAL ORDER :

The Second Appeal arises out of the concurrent findings of the Courts below as regards the findings of fact as well as the law. The Trial Court by its judgment and order dated 28th October, 1998 partly decreed the suit and directed the appellants to hand over vacant possession of flat no.1-A to the respondents with further directions to pay mesne profits @ of Rs.4,000/- per month from 11th November, 1984 till handing over of possession. The Lower Appellate Court has by its judgment and order dated 10th February, 2011 confirmed the decision of the Trial Court.

2. The respondents are the owners of the land at P.T. sheet no.242 chalta no.4. By the Leave and Licence Agreement dated

14th December, 1966 the predecessor of the respondents had permitted original appellant no.1 to occupy an area of 24 square metres to the south-east of the property for a period of three years beginning from 1st January, 1967 on payment of monthly compensation of Rs.20/-. Under the licence original appellant no.1 was allowed to build a kiosk on the portion given to her. Accordingly, the appellants had put up a kiosk and had promised that they would remove the kiosk as and when required. In the year 1980, the respondents proposed to develop the property with the assistance of original defendant no.5, the developer. At that time, the appellants had shown reluctance for removing the kiosk and demanded alternate accommodation in new building. Therefore, by the agreement dated 6th December, 1980 the predecessor of the respondents agreed to give to original appellant no.2 premises admeasuring not less than 30 square metres on the ground floor of the proposed building facing east, on lease.

3. The respondents alleged that even before the appellants could be given possession of the premises to be allotted to them facing east, they forcibly entered into the premises of flat no.1-A thereby encroaching upon the same. Therefore the respondents filed the suit herein for possession of flat no.1-A from the appellants and mesne profits. The appellants denied the allegation of encroachment by forcible entry into flat no.1-A and

claimed that they had in fact been put in possession by original defendant no.5, the developer who is not impleaded to the present appeal. The Trial Court by its judgment and order held that the respondents have established that the premises to be leased under the agreement dated 6th December, 1980, to the appellants is a shop on the ground floor of the proposed building facing east direction and that the appellants had on 10th/11th November, 1984 illegally occupied flat no.1-A. Since then the appellants have been in possession of the same. The Appellate Court has confirmed the findings of the Trial Court.

4. Mr. Kakodkar, the learned advocate for the appellants submits that the Courts below have overlooked two crucial aspects of the matter. One aspect concerns is the pleadings of the appellants and the other is of appreciation of the evidence. It is the respondents' own case that original defendant no.5 had in connivance and collusion with the appellants put the appellants in the possession of flat no.1-A. The appellants also in their deposition claimed that they were put in possession by the original defendant no.5. Even if that is so it does not mean that the possession of the premises by the appellants is legal. The appellants need to establish their right to occupy the suit premises.

5. The other circumstance relied upon by the appellants is that a

letter written by one of the respondents that she has no objection to the appellants fixing up shutters to the premises. This letter though addressed to the appellants does not describe the premises to which the shutters were to be fixed. Thus, both the circumstances pointed out by Shri Kakodkar, the learned Counsel for the appellants cannot help the appellants in establishing that they were legally put in possession of the premises.

6. There is no substantial question of law arising for consideration of the Court. Hence, the Second Appeal is dismissed.

SMT. R. P. SONDURBALDOTA, J.

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