

IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No.83 of 2015

Smt. Saraswati S. Talwar and 2 others **Appellants**

Versus

Smt. Leandrina Pinto and others. **Respondents.**

And

Second Appeal No.84 of 2015

Smt. Laxmi Tukaram Talwar and another ... **Appellants**

Versus

Shri Elias Inocente Pinto and another **Respondents.**

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Mr. Shailesh Redkar, Advocate for the appellants.

Mr. Gilman Fernandes, Advocate for the respondents.

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CORAM : K.L. WADANE, J.

RESERVED ON :10/12/2015

PRONOUNCED ON :07/01/2016

ORDER

1] These appeals are arising out of the same subject matter i.e. decree of eviction passed in Regular Civil Suit No. 247/1999. Therefore, they are disposed of by a common judgment.

2] The brief facts of the case may be stated as follows:-

One of the respondents filed a suit for eviction against one of the respondent-Mohan Reddi for eviction of the property locally known as “Adecuspedda” also known as “Pedda Ademoroda” situated at Pedda, within the limits of Margao bearing land Registration No.25748 bearing residential premises No.182. That suit for the eviction of the respondent – Mohan Reddi was decreed since he failed to contest the suit. Subsequently, the plaintiffs filed Execution Petition No.24/2001 and in that proceeding the third party - the appellants namely Laxmi Talwar and Manju Talwar appeared and filed objection under the provision of Order XXI Rule 97 of the Code of Civil Procedure. After hearing both sides, the application of the present appellants under Order XXI Rule 97 of the Code of Civil Procedure, is dismissed. Against which, the appellants have preferred Second Appeal No.84/2015.

3] One Suresh Maruti Talwar - husband of appellant no.1 and father of appellant no.2 and one Tukaram Talwar - the father of appellant no.3 have filed a suit for permanent injunction restraining the respondents from evicting them from premises known, “Adecuspedda” also known as “Pedda Ademoroda”, under Chalta Nos. 180, 197 of P.I. Sheet No.255 of the City of Margao and it is contended that the plaintiffs are residing in the house bearing no. 315-A of Margao

Municipal Council. The tenanted house of the plaintiffs bearing no.315-A falls in the property surveyed under Chalta no. 182. The suit of the plaintiffs was dismissed. Therefore, they preferred Regular Civil Appeal No.1/2015. The same was also dismissed. Therefore, they preferred Second Appeal No.83/2015.

4] During inquiry of the application under Order XXI Rule 97 of the Code of Civil Procedure, it was noticed that Regular Civil Suit No.94/2005 regarding the same subject matter is pending. Therefore, the learned trial Court has clubbed the inquiry proceeding in the Execution Petition and Regular Civil Suit No.94/2005 and common evidence in both the proceedings were led. Considering the evidence on record and upon hearing both sides, the learned trial Court has rejected the application of the third party under Order XXI Rule 97 of the Civil Procedure Code, so also Regular Civil Suit No.94/2005 was also dismissed. Against dismissal of the two orders, two Civil Appeals were preferred. Both Civil Appeals were dismissed. Hence, present Second Appeals.

5] I have gone through the reasons recorded by the First

Appellate Court while dismissing both the appeals also gone through the relevant record.

6] Considering the rival contentions of both parties, it reveals that the dispute was started about the identification of the suit property i.e. house no.89. It is the contention of the appellants that they were inducted as tenant in the house no.315 before 40 years and the respondent-original plaintiff cannot evict them without following due process of law.

7] As against this, it is argued on behalf of the respondents that there is sufficient evidence on record to show that the house no.89 was initially given to One Mohan Reddi (one of the respondents) on licence. The plaintiffs issued notice to Mr. Reddy and his licence was revoked. No reply or written statement was filed by Mr. Reddy. He failed to contest the suit and, therefore, the suit was decreed. Subsequently, to defeat the fruits of eviction decree the respondent Mohan Reddi has sub-letted the premises. Therefore, only controversy between the parties is whether the house no.89 is the same property bearing house no.315-A or not.

8] To find out, whether house no.315-A is the same house bearing house no.89 or otherwise it is necessary to refer some evidence on record, in short.

9] The evidence of Subhash Shirodkar - bailiff indicates that he went to the spot where there were three independent houses and that he found house nos.87 and 88, but did not find house no.89. His evidence also indicates that he found adjoining house having no.315-A painted on the door. Therefore, it is difficult to understand how the premises which is part of one building would have a number which is serially not in line that the adjoining premises of the same building. The appellants have failed to explain how such irregular number of the house of the series appears. This is one thing and Saraswati Talwar one of the plaintiffs in Regular Civil Suit no.94/2005, in her deposition, admitted the present case pertains to the house no.89.

10] Secondly, in the inquiry, under Execution No.24/2001 an Officer of the Margao Municipal Council states that there was no house in Margao Municipal Council bearing No.315-A assessed for the purpose of house tax. Therefore, testimony of such independent witness

cannot be brushed aside. Further, it is seen from the record that the decree holder produced on record certificate (Ex.47-C). That certificate was issued by the Margao Municipal Council which indicates that the assessment number and ward number of two houses and house bearing no.89 is shown to be in Ward no.8. In Regular Civil Suit No.94/2005 the appellant third party herself produced similar certificate at Ex.60. The decree holder in his affidavit has stated that his building has three divisions recorded in the Margao Municipal Council under Numbers 87/8, 88/8 and 89/8. There is no dispute raised by the parties as regards the fact that the house no.89 is in the Ward no.8. In spite of the fact that certificate speaks of this and PW 2 having made categorical statement that the house no.315-A does not exist in Ward no.8.

11] Further, it is material to note that in the inquiry conducted in the Execution Proceeding, the third party Laxmi had stated in her cross-examination that she did not have any receipt of any rent paid to Batkar, as no such receipt was given. If this was so, then receipts that have been subsequently produced at Exhibit 60 in the suit are to be rejected straightway as being fabricated subsequently by the party in order to falsely create evidence to show that the third party is tenant over the suit

property.

12] That the appellant so called tenant has not produced lease deed to show that they are statutory tenant over the suit premises. One thing is very material to note that in the Execution Proceeding, the third party appellant Laxmi admitted that when bailiff had gone to evict them, he asked for their ration card and that on the ration card shown by her, her house number is stated to be 23, which suggests that third party appellant is staying in house no.23. Further, from the following circumstances, it reveals that the appellants have tried to create some evidence to show that they are tenant over the house no.315-A. The evidence of PW 1 in a suit stated that when they went to their house every year as the number put by Municipality, they write the number again. If PW 2 was residing in the said house, he ought to have know who have painted the number on board, taking into consideration the claim made by PW 1 in respect of the painting of the number on the board. His ignorance in this respect goes to show that the number has been painted to set up a false claim by Talwar family. More so, as there is no evidence to show that number 315-A was allotted to the premises by the Municipality. As already referred PW 3 Saraswati Talwar has

admitted in her cross-examination that the present case pertains to house no.89.

13] Taking into consideration overall material on record, I am of the opinion that the learned trial Court as well as First Appellate Court consider all the aspects and arrived at a correct conclusion. No substantial question of law involved in both these appeals. Therefore, both the appeals are dismissed, at the stage of admission. There shall be no order as to costs.

14] In view of disposal of Second Appeal No.84/2015, Civil Application No.201/15 does not survive. Accordingly, it is disposed as infructuous.

K. L. WADANE, J.

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