

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 949 OF 2015

MR.ANANT GOPINATH KESSARKAR AND
ANR.,

... Petitioners

Versus

SHRI.SURESH MANGILAL PRAJAPAT.

... Respondent

Mr. Sahish Mahambrey, Advocate for the Petitioners.
Mr. S. S. Kakodkar, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 18th April, 2016

P.C.

Heard.

2. By this Petition, the Petitioners who are the original Plaintiffs, are challenging the concurrent findings of the dismissal of their application for temporary injunction.

3. The brief facts are that the Petitioners have filed Regular Civil Suit no.305/2014/E against the Respondents for possession and permanent and mandatory injunction restraining the Respondent/Defendant or anybody on his behalf in interfering with the suit shop premises bearing house no.1425/- situated at Margao. The Petitioners are also seeking mesne profits against the Respondent.

4. The Petitioners had filed an application for temporary injunction seeking mandatory injunction at the interim stage for a direction to the Respondent to hand over, vacant possession of the suit shop and alternatively for injunction restraining him from carrying out any business activity/commercial activity in the suit shop premises and to pay a sum of Rs.30,000/- as mesne profits per month, pending disposal of the suit.

5. The Trial Court by the Order dated 16.03.2015, has dismissed the application which has been confirmed by the learned District Judge vide Judgment and Order dated 23.09.2015 passed in MCA no. 25 of 2015. A perusal of the Judgment of the Appellate Court shows that the Petitioners had not pressed for the relief of mandatory injunction directing the Respondent to handover possession and for deposit of mesne profits. Thus, the only relief claimed was restricted to an Order restraining the Respondent from carrying out any commercial activity/business in the suit shop.

6. Indisputably, the shop premises were initially let out to the late father of the Respondent namely Mangilal Prajapat under a Lease Deed dated 28.07.1999 for a period of ten years. There was a subsequent Lease Deed dated 07.09.2009 in which the shop premises were leased out to deceased Mangilal Prajapat for a further period of ten years commencing from 01.08.2009 on payment of monthly rent of Rs.5,000/-. The case made out by the Petitioners is that although

in the initial Lease Deed of the year 1999, the "Lessee", was to include the heirs or assignee of the Lessee in the subsequent Lease Deed of the year 2009, there was no recital to that effect. It is thus contended that after the death of Mangilal Prajapat, sometime in the year 2014, the Respondent had no authority to retain the possession of the suit shop, as he cannot be said to have inherited the lease hold rights.

7. The learned Counsel for the Petitioners submits that the reliance placed by the learned District Judge on Section 2(p) of the Goa, Daman and Diu Building (Land, Lease and Eviction) Control Act of 1968, (Act, for short), is misplaced. The learned Counsel relies on Section 3(i)(cc) in order to submit that the provisions of the Act would not apply to any building let out or leased for the first time on or after 20.04.1994 where the monthly rent exceeds Rs.5,000/- per month if such building is used for commercial purpose, as in the present case. The learned Counsel has pointed out Clause (3) of the Lease Deed of the year 2009 which shows that the monthly rent agreed was Rs.5,000/- with an escalation Clause of 6 percent per annum. Learned Counsel further points out that in the year 2014, the rent was Rs.6,625/- and, as such, under Section 3(1)(cc) of the Act, the applicability of the said Act would stand excluded.

8. On the contrary, it is submitted by the learned Counsel for the Respondent, that the premises were leased for the first time on or

after 20.04.1994. Learned Counsel submits that even assuming that the provisions of the Act are not applicable, the matter would be governed by the General Law in which tenancy rights are heritable. Learned Counsel further submits that there cannot be any estoppel against law and the absence of the recital in the Lease Deed of the year 2009 wherein the heirs and assignees of the Lessee are not included in the definition of the "Lessee" would not be decisive.

9. I have considered the rival circumstances and the submissions made. The only question is whether the Respondent can be restrained at this stage from carrying out any commercial activity/business in the shop premises. Admittedly, in the Lease Deed of the year 2009, "Lessee", is not to include the heirs or assignees of the original Lessee. However, prima facie, in my considered view, that would not be decisive, as lease hold rights are otherwise heritable under the General Law unlike a licence, which is purely personal in nature. Thus, unlike in the case of licence, the heirs of a tenant would inherit tenancy rights. There is also an issue as to the applicability of Section 3(1)(cc) of the Act inasmuch as the initial rent fixed in the Lease Deed of the year 2009 was Rs.5,000/- and on account of escalation clause, it now exceeds Rs.5,000/-. Indisputably, the Respondent is conducting a business of a Sweet Meet Shop and prior thereto, the father of the Respondent was doing the said business in the suit shop premises. The Courts below have concurrently held that the balance of convenience would not lie in

favour of the Petitioner inasmuch the Petitioners would not suffer any irreparable loss as there is a claim for mesne profits.

10. On consideration of the overall circumstances, I do not find that the impugned Orders exhibit jurisdictional error, so as to warrant interference.

11. In such circumstances, the Petition is dismissed with no order as to costs.

12. All rival contentions of the parties, are expressly left open.

C. V. BHADANG, J.

arp/*