

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.847 OF 2015
along with
CIVIL APPLICATION NO.1814 OF 2015
in
SECOND APPEAL NO.847 OF 2015**

Mahesh Anant Bavkar .. Appellant/Applicant

Vs.

Murti Kashinath Deolkar .. Respondent

Mr.Sandesh Shukla a/w Mr.Harshavardhan Bhende i/by Mr.Santosh Sawant for the appellant/applicant.

Mr.S.P.Thorat for the respondent.

CORAM : R.D. DHANUKA, J.

DATE : 5th February 2016

P.C.

. By this second appeal, the appellant (original plaintiff) has impugned the order dated 30th April 2015 passed by the Principal District Judge, Sindhudurg-Oros dismissing the appeal filed by the appellant. In the said appeal, the appellant had impugned the order passed by the learned trial Judge dismissing the suit filed by the appellant and allowing the counter claim filed by the respondent.

2. In the suit filed by the appellant (original plaintiff), the appellant had applied for injunction against the respondent from disturbing the possession of the appellant in respect of the suit premises. In the said suit, the respondent who was a landlord of the suit premises filed a written statement resisting the said suit and also filed a counter claim inter alia praying for possession of the suit premises.

3. Learned trial Judge has rendered a finding of fact that the appellant herein was not a tenant but was a licensee and his license came to an end much prior to the date of filing of the suit. After considering the oral evidence as well as documentary evidence and the provisions of law, the learned trial Judge rendered a finding of fact against the appellant that he was not a tenant. Since the license has already come to an end and the appellant was not a tenant and since the appellant was unlawfully holding the suit possession, the learned trial Judge allowed the counter claim filed by the respondent for recovery of possession.

4. The Lower Appellate Court also independently decided this issue and recorded the reasons and dismissed the appeal filed by the appellant.

5. Learned counsel appearing for the appellant submits that the learned trial Judge could not have entertained the counter claim for recovery of possession in the suit filed by the appellant which was only for an injunction restraining the respondent from restoring the possession of the appellant. At the most, the respondent ought to have filed an independent suit for recovery of possession. He submits that the counter-claim itself was thus not maintainable and the order allowing the counter claim passed by the learned trial Judge is without jurisdiction.

6. A perusal of the order passed by the two Courts below clearly indicates that this issue has been dealt with by both the Courts at length. It is held by the Lower Appellate Court that it was the case of the respondent that the appellant was a licensee under Section 52 of

the Indian Easements Act, 1882. The trial Court had accordingly invoked ordinary jurisdiction of the trial Court and not the special jurisdiction under Section 33(1) of the Maharashtra Rent Control Act, 1999. The Lower Appellate Court has rightly held that in view of the powers of the trial Court under Order VII Rule 6-A of the Code of Civil Procedure, 1908, in the suit filed by the plaintiff for perpetual injunction, the counter claim filed by the defendant for recovery of possession of the suit premises in the capacity of licensor was also tenable and the trial Court had also jurisdiction to entertain the counter claim filed by the defendant.

7. In my view, the Lower Appellate Court has rightly held that the counter claim was maintainable in view of Order VII Rule 6-A of the Code of Civil Procedure, 1908 in the suit filed by the appellant for injunction. In my view, the trial Court has rightly held that the appellant was a licensee and his license had already expired in the year 2008 i.e. much prior to the date of filing of the suit.

8. Learned counsel appearing for the appellant does not dispute that if any suit for recovery of possession would have been filed by the respondent separately, the learned trial Judge who had allowed the counter claim would have jurisdiction to entertain such suit for possession if would have been filed separately.

9. In my view, no substantial question of law arises in this appeal. The findings rendered by the two Courts below are concurrent findings which are not perverse and thus cannot be interfered with under Section 100 of the Code of Civil Procedure, 1908. The second

appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the second appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

10. At the request of the learned counsel for the appellant, the Executing Court shall not execute the decree for a period of two weeks from today. In view of the order passed by the learned trial Judge is upheld by the Lower Appellate Court and also by this Court, the original decree holders would be entitled to execute the decree in terms of the order passed by the learned trial Judge after expiry of two weeks from today by making an appropriate application.

R.D. DHANUKA, J.