

JPP

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

*SECOND APPEAL NO. 194 OF 2015
with
SECOND APPEAL NO. 435 OF 2016
with
CIVIL APPLICATION NO. 388 OF 2015*

Mr. Laxman Vitthal Yevale & Anr. ... Appellants.

V/s.

Mr. Balwant Sakharam Salunkhe. ... Respondents.

Mr. P.S. Dani, Sr. Advocate a/w. Rahul Nerlekar, Ms. Devika Nigade, Ms. Saanya Ashok i/b. Divya Shah & Associates for the Appellants/Applicants.

Mr. Aditya Pimple a/w. Ms. Sheetal Shah i/b. Mehta & Girdharlal for the Respondent 1.

CORAM : N.M. Jamdar, J.

08 June, 2016.

Oral Order :-

Regular Civil Suit Nos. 76 of 2010 and 53 of 2010 were filed by the Respondent in the Court of Civil Judge, Junior Division, Mahabaleshwar. Both the Suits were tried by the learned Civil Judge and were disposed of by the judgment and decree dated 30 November 2010. The Appellant herein filed the Regular Civil Appeal No. 20 of 2010 in Regular Civil Suit No. 76 of 2010 and Regular Civil Appeal No. 21 of

2011 in Regular Civil Suit No. 53 of 2010. The learned District Judge, Satara by a common judgment and order dated 26 September 2014 dismissed the Appeals. The Second Appeal No. 194 of 2015 arises from Regular Civil Suit No. 76 of 2010 and Second Appeal No. 435 of 2016 arises from Regular Civil Suit No. 53 of 2010. These two Appeals were heard alongwith the Second Appeal No. 193 of 2015. The Second Appeal No. 193 of 2015 is filed by the Appellants seeking possession of the suit property from the Respondent. By order passed today, the Second Appeal No. 193 of 2015 is admitted.

2. The Regular Civil Suit No. 53 of 2010 was filed by the Respondent seeking an injunction in respect of the suit property which contains a shop and an area below the staircase. According to the Respondent, the Appellants were disturbing his possession, hence an order of injunction was necessary. While the said Suit No. 53 of 2010 was pending, according to the Respondent the Appellants took possession of the area below the staircase forcibly from him, and it was necessary that the possession be handed over to the Respondent. The learned Civil Judge came to the conclusion that the Respondent is in possession of the suit shop as well as they were wrongly dispossessed from the area below the staircase during the pendency of the Suit No. 73 of 2010, and by the impugned judgment and decree restrained the Appellants from interfering with the possession of the Respondent in respect of the shop and directed the Appellant to hand over the possession of the area below the staircase back to the Respondent. This direction has been confirmed by the learned Appellate Court.

3. As far as the possession of the Respondent in respect of the suit shop is concerned, there is no dispute that the Respondent is in possession of the suit shop. Both the Courts have also held it to be so. Appeal of the Appellant seeking possession has been admitted. The Appellants have clearly shown their intention to disturb the possession of the Respondent and have in fact proceeded to forcibly take possession of the area below the staircase which is the finding of fact rendered by both the Courts and therefore, as regard the decree of injunction protecting the possession of the Respondent in respect of the suit shop and granting the injunction against the Appellants cannot be faulted with.

4. As regard the area below the staircase is concerned, it is the case of the Appellants that there was a compromise in the year 1963 between the predecessors of the Appellants and Mr. Warunkar who was the landlord of the premises. According to the Appellants, the predecessors of the Appellants had agreed to hand over the possession of the suit property to Mr. Warunkar on a condition that Mr. Warunkar will use the property for himself and will not let it out to anybody else. It is the case of the Appellants that thought the terms of the compromise stated so, only the possession of the shop was handed over to Mr. Warunkar and the area below the staircase continued to be in their possession. Mr. Dani, the learned Senior Advocate for the Appellants has assailed the reasoning of both the Courts on the ground that both the Courts have not considered that even though the compromise decree mentioned handing over of the possession, factually it was not so given. It is submitted that Suit No. 76 of 2010 was not filed under Section 6 of

the Specific Reliefs Act and therefore, the title of the suit property ought to have been considered by the Courts before granting a decree against the Appellants directing the Appellants to have over the possession of the suit property.

5. When the terms of compromise stipulated that the Appellants will hand over the possession of the entire property to Mr. Warunkar, why and in what circumstances only the shop was handed over and not an area below the staircase, was for the Appellants to establish which the Appellants have failed to do. Both the Courts recorded concurrent findings of fact based on Commissioner's Report that the Respondent was in possession of the area below the staircase before the Respondent forcibly dispossessed. The learned Civil Judge considered the Commissioner's Report in detail and found that the area below the staircase was in possession of the Respondent. Mr. Dani submitted that in earlier suit, the Respondent had described the property excluding the area below the staircase. This contention has been considered by both the Courts and both the Courts have found, taking into consideration the nature of the proceedings namely the fixation of standard rent and injunction, that only on this ground the claim that the Respondent was in possession cannot be negated. Mr. Pimple, the learned Counsel for the Respondent pointed out that in a reply to the public notice issued, the Respondent had described the entire premises, including the area below the staircase, to which there was no response from the Appellants. The Appellants have not produced any document to show that the Appellants

continued in possession of the area below the staircase and on the other hand it is the assertion of the Respondent that they are running a laundry in the area below the staircase.

6. Mr. Pimple contended that even though it is not specifically mentioned the suit will have to be treated as one under Section 6 of the Specific Relief Act. If the tenor of the suit is seen, it is clearly based on prior possession and dispossession, it therefore cannot be stated that the suit is not filed under Section 6 of the Specific Relief Act. Apart from this position, and whether the further proceedings are maintainable or otherwise, the finding of the fact recorded by both the Courts that the Respondent is in possession of the suit property including the area below the staircase cannot be termed as perverse to require interference. Thus, the Respondent is entitled for injunction in respect of the shop and restoration of possession of the area below the staircase and injunction in respect of the same. The decision of both the Courts cannot be faulted with. No substantial question of law arises. Both the Second Appeals therefore cannot be entertained and are accordingly dismissed.

7. It is however clarified that since the suit in respect of the area below the staircase was filed for restoration of possession on the basis of prior possession and that the Second Appeal No. 193 of 2015 is admitted, the disposal of these Appeals will not affect the claim of the Appellants in Second Appeal No. 193 of 2015 to be decided on its own merits.

8. Ad-interim relief granted in this Appeal in respect of handing over the possession of the property is continued for period of six weeks from today.

(N.M. Jamdar, J.)