

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 86 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 106 OF 2015****IN****APPEAL FROM ORDER NO. 86 OF 2015****Kamran Sadruddin Allarakhia****..... Appellant****VERSUS****Harish Gopal Amin & Ors.****..... Respondents**

Mr.Vishal Kanade, i/b. Ms.Manisha Gawde for the Appellant.

Mr.S.Shamim, i/b. Shamim & Co. for the Respondent No.1/Appellant in Appeal from Order (St) No.26 of 2016.

Ms.Priyanka Rathi for Respondent No.3.

CORAM : R.D. DHANUKA, J.**DATED : 16th FEBRUARY, 2016****P.C.**

By this appeal from order, the appellant (original plaintiff) has impugned the order passed by the learned trial judge dismissing the notice of motion inter alia praying for appointment of the Court Receiver and injunction in respect of the suit premises in the suit filed under section 6 of the Specific Relief Act.

2. It was the case of the applicant (original plaintiff) that the respondent nos. 1 and 2 had entered into a leave and licence agreement with the appellant in respect of the suit premises. According to the provisions of the said leave and licence agreement, though the said licence expired on 31st July, 2014, it is the case of the appellant that the parties were negotiating renewal of the leave and licence agreement. Several letters were exchanged between the parties for negotiating the

terms and conditions of the leave and licence agreement. It was also the case of the appellant that the appellant had also paid a sum of Rs.4 lacs to the respondent nos. 1 and 2 pursuant to such negotiation.

3. It is the case of the appellant that the respondent nos. 1 and 2 with the help of local police station, illegally dispossessed the appellants from possession of the suit premises sometime on 19th December, 2014 without due process of law. The appellant accordingly filed a suit under section 6 of the Specific Relief Act and applied for the appointment of the Court Receiver and injunction in the notice of motion filed in the said suit.

4. Mr.Kanade, learned counsel appearing for the appellant (original plaintiff) invited my attention to some of the documents annexed to the plaint as well as to the compilation of the documents and would submit that the appellant was in established and exclusive possession of the suit property as on 19th December, 2014 when the appellant was dispossessed without due process of law. He relied upon various bills including the telephone bills and various other documents to demonstrate that the appellant was in possession of the suit property on 19th December, 2014. He submits that the respondent nos. 1 and 2 in collusion with the police has taken law in their hand and have illegally dispossessed the appellant. The appellant accordingly filed FIR against the respondent nos. 1 and 2. He submits that respondent nos. 1 and 2 also filed FIR against the appellant.

5. Learned counsel appearing for the appellant also invited my attention to various prima facie findings recorded by the learned trial judge and would submit that though the learned trial judge has prima facie come to the conclusion that the appellant was illegally dispossessed by the respondent nos. 1 and 2 without due

process of law, the learned trial judge has erred in dismissing the notice of motion on the ground that after expiry of the licence period, the appellant had no right to continue to occupy the suit premises. He submits that in the suit filed under section 6 of the Specific Relief Act, the learned trial judge could not have considered the title of the appellant or right of the appellant to continue to occupy the suit premises after expiry of the licence period. He submits that the respondent nos. 1 and 2 had however alleged that the appellant had handed over possession of the suit premises on 21st December, 2014 and within two days thereof, respondent nos. 1 and 2 had filed a caveat. He submits that the appellant had filed a suit on 30th December, 2014.

6. Learned counsel also invited my attention to the letters addressed by the respondent nos. 1 and 2 on 9th July, 2014 and another letter addressed in the month of September 2014 and would submit that those two letters indicates that the appellant had paid a sum of Rs.4 lacs to the respondent nos. 1 and 2 and there was a reference to the renewal of the leave and licence agreement in the said letters.

7. My attention is also invited to the letter addressed by the appellant to the respondent no.3 bank in which it was specifically brought to the notice of the bank that the appellant was in possession of the suit property.

8. Learned counsel for the appellant submits that in the past when the possession of the suit property was handed over back to the respondent nos. 1 and 2 by the earlier licensee, the possession receipt was executed by and between the parties regarding handing over possession. He submits that in this case admittedly the respondent nos. 1 and 2 could not produce any possession receipt in support of their contention that the appellant had handed over possession of the suit property

to them.

9. Learned counsel for the respondent nos. 1 and 2 on the other hand placed reliance on the provisions of the leave and licence agreement and it is submitted that after expiry of the leave and licence agreement, the appellant had no right, title or interest of whatsoever in the suit premises. He submits that the respondent nos. 1 and 2 did not agree to renew the leave and licence agreement. It is submitted that since the appellants were not handing over the possession of the suit property, the respondent nos. 1 and 2 had filed FIR and the wife of the appellant was arrested on 20th December, 2014. He submits that the appellant had voluntarily handed over possession of the suit property on 24th December, 2014. He submits that the appellant did not pay any amount of Rs.4 lacs as canvassed by the learned counsel for the appellant.

10. It is submitted by the learned counsel that the appellant has made various false and incorrect statements in the plaint about their alleged possession in respect of the suit property. He submits that the appellant was not in continuous possession of the suit property since 2003 as alleged. He submits that considering the conduct of the appellant, learned trial judge was justified in dismissing the notice of motion.

11. It is submitted by the learned counsel that the leave and licence agreement was duly terminated on 9th July, 2014. It is submitted that the respondent nos. 1 and 2 have already entered into a leave and licence agreement with the respondent no.3 bank on 17th March, 2015 who is in possession of the suit property.

12. Learned counsel appearing for the respondent no.3 bank submits that the

respondent nos. 1 and 2 have entered into a leave and licence agreement for a period of five years in respect of the suit property which is duly registered. It is submitted that respondent no.3 bank has already spent crores of rupees and have paid substantial amount to the respondent nos. 1 and 2. She submits that this court shall not pass any interim order in favour of the appellant at this stage which would cause prejudice to the rights of the respondent no.3 bank and would also cause inconvenience to the large number of account holders of the bank.

13. Mr.Kanade, learned counsel appearing for the appellant in rejoinder submits that the correspondence entered into between the parties itself would indicate that the appellant was allowed to continue as and by way of permissive user after 31st July, 2014 and had paid consideration. The respondent nos. 1 and 2 have demanded rent from the appellant for the month of August and September 2014 i.e. after expiry of the licence period.

14. A perusal of the documents produced by the appellant before the learned trial judge and for consideration of this court would indicate that the leave and licence agreement was for the period upto 31st July, 2014. The correspondence placed on record would indicate that the parties were negotiating for renewal of the leave and licence agreement. The appellants have also made payment of Rs.4 lacs in favour of the respondent nos. 1 and 2 which cannot be disputed.

15. The documents produced on record also clearly indicates that the appellant continued to use and occupy the suit premises upto the date of dispossession on 19th December, 2014. There are bills and other statutory documents produced on record in support of this submission.

16. It is not in dispute that in respect of the earlier leave and licence agreement, when the licensee had handed over possession back to the respondent nos. 1 and 2, the possession receipt was executed by and between those parties including respondent nos. 1 and 2. In this case respondent nos.1 and 2 did not execute any such possession receipt. It is also not the case of the respondent nos. 1 and 2 that they had insisted for execution of receipt of possession from the appellant but the same was not executed by the appellant.

17. A perusal of the plaint and the manner in which the respondent nos. 1 and 2 had filed a complaint against the appellant, got the wife of the appellant arrested and on the very next date the appellant has alleged to have handed over the possession of the suit property prima facie indicates that the concerned police station has played major role in getting forcible possession of the suit property from the appellant to the respondent nos. 1 and 2. There are serious allegations made by the appellant against the concerned police station and about their involvement in assisting the respondent nos. 1 and 2 in getting forcible possession of the suit property. If the respondent nos. 1 and 2 had executed possession receipt in respect of the earlier transaction, the property being a valuable property, this court cannot appreciate the submission of the learned counsel for the respondent nos. 1 and 2 that the appellant had handed over possession of the suit property voluntarily and inspite thereof no possession receipt was executed by and between the parties.

18. A perusal of the correspondence addressed by the respondent nos. 1 and 2 itself would indicate that respondent nos. 1 and 2 was demanding rent in respect of the period August and September 2014. Learned counsel for respondent nos. 1 and 2 could not explain as to how the amount of Rs.4 lacs was recovered from the

appellant after expiry of the leave and licence period under the leave and licence agreement.

19. A perusal of the order passed by the learned trial judge indicates that on one hand the learned trial judge has made prima facie observations in several paragraphs of the impugned order that the appellant was dispossessed by the respondent nos. 1 and 2 without due process of law and illegally and on the other hand the learned trial judge found himself helpless in passing any interim order in favour of the appellant merely on the premise that after 31st July, 2014, the appellants had no right, title or interest of any nature whatsoever to continue to occupy the suit premises. In my view this conclusion drawn by the learned trial judge is totally erroneous and contrary to the law laid down by the Supreme Court and in breach of section 6 of the Specific Relief Act. In an action under section 6 of the Specific Relief Act, learned trial judge can not decide the title of the parties. Once the learned trial judge had come to the conclusion that the respondent nos. 1 and 2 had illegally dispossessed the appellant without due process of law, the learned trial judge in my view ought to have granted appropriate relief in favour of the plaintiffs. A perusal of the order indicates that the learned trial judge has not only rejected the prayer of the Court Receiver but has also refused to grant injunction against the respondent nos.1 and 2.

20. Insofar as possession of the respondent no.3 bank is concerned, a perusal of the record indicates that much before execution of the leave and licence agreement with the respondent no.3 bank, the appellant had already informed the bank about their established possession in respect of the suit property. The bank was thus fully aware of the possession and rights claimed by the appellant in respect of the suit property.

21. However this court will have to consider whether at this stage it would be appropriate for this court to dispossess the bank in this appeal considering the subsequent events having taken place. It is not in dispute that the respondent no.3 bank is in possession of the suit property since 17th March, 2015 and the said agreement entered into between the parties is for a period of five years. The respondent no.3 bank has been carrying on its banking activities from the suit premises since then. The respondent no.3 bank had large number of customers. In my view, at this stage this court cannot accept the submission of the learned counsel for the appellants to dispossess the bank and place the appellant in possession.

22. Considering the facts of this case, I am however of the prima facie view that the respondent nos. 1 and 2 having taken law in hand and having dispossessed the appellant without due process of law, learned trial judge ought to have appointed the Court Receiver in respect of the suit premises and ought to have appointed respondent no.3 as an agent of the court receiver on the reasonable terms.

23. In my view interest of justice would be met with if following order is passed:-

- (a) Impugned order passed by the learned trial judge refusing to appoint the Court Receiver and refusing to grant injunction against respondent nos. 1 and 2 is set aside.
- (b) Court Receiver, High Court, Bombay is appointed as a Receiver of the suit premises with a direction to take symbolic possession of the suit property.

(c) The Court Receiver shall not dispossess the respondent no.3 bank from the suit premises.

(d) If during the pendency of the suit, the respondent no.3 vacates the suit premises, the respondent nos. 1 and 2 shall not handover possession of the suit premises to anybody else without obtaining leave of the learned trial judge.

(e) Till the court receiver takes possession of the suit property, as directed aforesaid, respondent nos.1 and 2 shall not create further third party rights in respect of the suit property.

(f) The appellant and respondent no.3 also shall not create any third party rights in the suit premises.

24. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

25. At the request of the learned counsel for respondent nos. 1 and 2, the Court Receiver shall not implement this order for a period of six weeks.

[R.D. DHANUKA, J.]