

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 337 OF 2015
ALONGWITH

CIVIL APPLICATION NO. 1169 OF 2015
IN
FIRST APPEAL NO. 337 OF 2015

Shri. Durga Prasad Pardeshi

.....Appellant
(Orig. Plaintiff)

V/s.

M/s. S.B. Developers and Ors.

.....Respondent
(Orig. Defendant)

* * * * *

Mr. Shashikumar K. Jain a/w. Ms. Naina Desai, Advocate for the
appellant.

Mr. Piyush Shah, Advocate for respondent no.1.

Ms. Neha Bhide, Advocate for respondent no.2.

Mr. Rakesh Agarwal, Advocate for respondent no.4.

CORAM :-

SMT. R.P. SONDURBALDOTA, J.

4TH MAY, 2016.

P.C. :-

1). The appellant in this First Appeal is the original plaintiff
who filed the suit herein for a declaration that, he is entitled for the
permanent alternate accommodation in the reconstructed building

in lieu of Stall no.2, a paper stall in Kavarana Building, Parel and for a permanent injunction to restrain respondent no.1, developer from handing over possession of permanent alternate accommodation to any person other than him. The trial Court, by its judgment and decree dated 17th February, 2015 dismissed the suit. The respondents are the original defendants. Respondent no.1 is the developer. Respondent no.2 is Maharashtra Housing Area Development Authority and respondent no.3 is the Society formed by the tenants in Kavarana building. Respondent no.4 is another claimant to the same alternate accommodation.

2). Briefly stated, the appellants case in the plaint is as follows :-

. The father of the appellant was carrying on business in stall no.2 since the year 1962 as the sub-tenant in respect of the premises. On his death, in the year 1977 the appellant continued the business by getting all the licenses in respect of the business transferred to his own name, one of the licenses being stall board license issued by the Mumbai Municipal Commissioner. Respondent no.1 has been granted permission by respondent no.2 to develop Kavarana building under Regulation 33(7) of the Development Control Rules. For the purpose of redevelopment, list of the tenants/occupants of

Kavarana building was prepared and it showed the appellant as the sub-tenant of respondent no.4. Respondent no.1 entered into development agreement with all the tenants on 20th June, 2007 which was registered with the Sub-Registrar's office on 27th July, 2007. That agreement has been signed by the appellant and respondent no.4 as the joint occupants of stall no.2 giving consent for the re-development. Respondent no.1, had by the notice dated 1st January, 2009 called upon the appellant to vacate the premises and handover possession for the purpose of redevelopment. The said notice also offered compensation for acquisition of transit accommodation. At the relevant time, the appellant was not keeping well and could not attend to the office of the Society to accept the cheque for compensation towards transit accommodation. However, there is no dispute that he has subsequently received the amount.

3). On 14th November, 2011 the appellant filed the suit herein for the reliefs as described hereinabove. It is to be noted at this place that, the appellant has challenged neither the development agreement, nor the list of tenants prepared by respondent no.2 showing the appellant as the joint occupant of stall no.2 alongwith respondent no.4.

4). Respondents no.1 and 2 contested the suit raising preliminary objections of maintainability of the suit as also the pecuniary jurisdiction of the Bombay City Civil Court to entertain the suit. Respondent no.4 contended in his written statement that, neither the appellant, nor his predecessor was ever in exclusive possession of stall no.2. It has been his case that, he has been in joint possession of the suit premises with the appellant. He referred to the irrevocable consent executed jointly by the appellant and him in favour of respondent no.1 in the year 2007 and contended that the same remains unchallenged till date. According to him, it is as such not open for the appellant to claim to be in exclusive possession of the old premises. He also pointed out that the possession of the alternate premises can be handed over to him, as well as, the plaintiff jointly as per the certified list of occupants.

5). The appellant examined himself in support of his claim. None of the respondents led any oral evidence. They have been content relying upon documentary evidence. The City Civil Court, after appreciating the oral and documentary evidence held that, there is nothing to establish that the appellant was in exclusive possession of the suit stall. On the contrary, the irrevocable consent of the occupier is a joint consent with respondent no.4. It has been taken

on a stamp paper of Rs.100/-. The trial Court noted that the list of documents duly certified by respondent no.2 records the name of the appellant, as well as, respondent no.4 as the occupier of the stall in question and has on the basis of the evidence before it, come to the conclusion that the appellant and respondent no.4 were in joint use and occupation of the suit stall. Mr. Jain, learned Advocate appearing for the appellant has not been able to point out any material on record to indicate the exclusive possession of the stall by the appellant. The documents relied upon by the appellant himself belie his claim of exclusive possession. In the circumstances, there was no merit whatsoever in the suit filed by the appellant. The trial Court, has therefore correctly dismissed the same. Consequently, the First Appeal is dismissed.

6). In view of dismissal of the First Appeal, the above Civil Application does not survive. The same is disposed off.

(SMT. R.P. SONDURBALDOTA, J)