

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 3202 OF 2016

MRS. SHUKRA JAGADISH NABAR ...Petitioner

Versus

MRS. JYOTSNA ARVIND SAVUR ...Respondent

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Mr. Rupesh Sohoni, Advocate for the Petitioner.

Mr. Ganesh Sovani i/b. V.I. Juris, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 01st APRIL, 2016

P.C.

1. Heard Mr. Rupesh Sohoni, learned Counsel for the petitioner and Mr. Ganesh Sovani, learned Counsel for the respondent, at length.

2. Rule. Mr. Sovani waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 20.2.2016 passed by the learned Judge, presiding in Court room No.14 of Bombay City Civil Court at

Greater Bombay below Exhibit-1 in Suit No.7972/2002. By that order, the learned trial Judge directed the petitioner, hereinafter referred to as the 'plaintiff', to value the suit as per the market value of flat Nos.46, 47, 48 and 49 on the 1st floor, in building known as Piroja Mansion at Alibhai Premji Road, Opp. Western Railway Parcel Office, Grant Road (East), Mumbai-400 007 (for short, 'suit premises'). The learned trial Judge further held that as the plaintiff has not valued the suit properly for the relief of possession she should get the premises valued by the expert valuer as on the date of the suit and pay deficit court fee. In short, the learned trial Judge directed the plaintiff to value the suit as per the market value of the suit premises.

4. Mr. Sohoni submitted that the respondent, hereinafter referred to as the defendant, is the sister-in-law (husband's sister) of the plaintiff. The plaintiff has instituted the suit against her for mandatory injunction to remove herself and her belongings from the suit premises as also for rendition of accounts in respect of business of the firm

M/s.Our Own School as on 1.2.1999. Initially, the plaintiff had valued prayer clauses (a) and (b) at Rs.1000/- and for prayer clause (c), namely, for rendition of accounts under Section 6(iv)(i) of the Maharashtra Court Fees Act, (for short, 'Act'). Subsequently, the valuation in paragraph-21 of the plaint was amended and the suit was valued at Rs.1000/- for prayer clause (b), namely, injunction restraining the defendants from entering into and upon and from using for any purpose any portion of the suit premises. As far as prayer clause (a) is concerned, it was valued at Rs.1,77,270/- being 150 times the net monthly rent of the suit premises and advalorem court fee was paid thereon as per Section 6(v) of the Act.

5. During the course of trial, it was noticed that the suit was not properly valued for the purposes of court fee and jurisdiction. The matter was posted for arguments on the point of valuation of the suit as per order dated 17.12.2015. Learned trial Judge observed that though the plaintiff has sought mandatory injunction against the defendant to

remove herself, in effect and in substance, it is a suit for possession of the suit premises. In paragraph-7, the learned trial Judge observed that valuation made by the plaintiff can be made only when relation of licensor and licensee or landlord or tenant exists between the plaintiff and the defendant. In paragraph-8, the learned trial Judge observed that the plaintiff claims herself to be the tenant of the suit premises. She has not accepted the defendant to be her sub-tenant or licensee. She has contended that she has gratuitously allowed the defendant to run a school in the suit premises. As such, the plaintiff ought to value the suit as per the market value of the suit premises.

6. Mr. Sohoni invited my attention to the assertions made in paragraph-17 of the plaint wherein the plaintiff has contended that in view of the close relationship between the plaintiff and the defendant, the plaintiff has gratuitously allowed the defendant to conduct a school in the suit premises. In other words, the plaintiff treats the defendant as gratuitous licensee.

7. On the other hand, Mr.Sovani supported the impugned order.

8. I have considered the submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

9. As noted earlier, in paragraph-17 of the plaint, the plaintiff has contended that in view of the close relationship between the plaintiff and the defendant, she has gratuitously allowed the defendant to conduct a school in the suit premises. In other words, the plaintiff is a licensor and the defendant is a gratuitous licensee. In view thereof, the findings recorded by the learned trial Judge in paragraph-8 that the plaintiff has to value the suit as per the market value, cannot be sustained. In my opinion, the plaintiff has rightly valued the suit at Rs.1,77,270/- by multiplying the monthly rent of Rs.1182/- by 150 times month's value. In view thereof, the impugned order is set aside. Learned trial Judge will now decide the suit on the basis that it is properly valued. Rule is made absolute in aforesaid terms with no

order as to costs. Liberty is reserved with the parties to request the learned trial Judge to decide the suit in a time bound manner. If such a request is made, the learned trial Judge will decide such an application as expeditiously as possible.

(R. G. KETKAR, J.)

Deshmane (PS)