

Vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.564 OF 2013  
WITH  
CIVIL APPLICATION NO.1314 OF 2013  
IN  
SECOND APPEAL NO.564 OF 2013

- |                                     |   |                 |
|-------------------------------------|---|-----------------|
| 1. Shri Sanjay Jairam Shinde,       | ) |                 |
| Age 42 years, Occupation Garage     | ) |                 |
|                                     | ) |                 |
| 2. Sou.Smita Sanjay Shinde,         | ) |                 |
| Age 34 years, Occupation Household, | ) |                 |
|                                     | ) |                 |
| Both residing at S.No.191, Zopadi   | ) |                 |
| No.994, Near Saibaba Temple,        | ) |                 |
| Nagpur Chawl, Yerwada, Pune         | ) |                 |
|                                     |   | ...Appellants   |
|                                     |   | Ori. Defendants |

....Versus....

- |                                      |   |                |
|--------------------------------------|---|----------------|
| Shri Jairam Sony Shinde              | ) |                |
| Age 68 Years, Occupation Retired     | ) |                |
| Residing at Block No.95/85, S.No.666 | ) |                |
| Kirloskar Housing Society,           | ) |                |
| Madhadev Nagar, Hadapsar, Pune.      | ) |                |
|                                      |   | ...Respondent  |
|                                      |   | Ori. Plaintiff |

Mr.P.D. Pise for the Appellants.

Mr.Gautam Kanchanpurkar with Mr.Ramdas Shelke for the Respondent.

**CORAM : R.D. DHANUKA, J.**  
**RESERVED ON : 24TH OCTOBER, 2016**  
**PRONOUNCED ON : 17TH NOVEMBER, 2016**

**JUDGMENT :-**

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned

the judgment and decree dated 22nd December, 2011 passed by the learned District Judge – 14 and Additional Sessions Judge, Pune, dismissing Civil Appeal No.489 of 2010 filed by the appellants thereby impugning the judgment and decree dated 20th April, 2010 passed by the learned trial Judge, passing a decree in favour of the respondent (original plaintiff) inter-alia praying for possession of the suit premises i.e. Hutment bearing No.994, situated at Nagpur Chawl, Yerwada, Pune – 411006 in Regular Civil Suit No.1762 of 2007. Some of the relevant facts for the purpose of deciding this second appeal are as under :

2. The appellant no.1 is the son of the respondent. The appellant no.2 is the daughter in law of the respondent. The suit premises is situated in a protected slum area of the Government and is under the control of the Pune Municipal Corporation. The suit premises is not owned by the respondent, but vests in the Government or Pune Municipal Corporation.

3. It was the case of the respondent that he had permitted the appellants to occupy the suit premises along with him, due to love and affection for his son and daughter in law. The appellants however, dispossessed the respondent. The respondent accordingly filed a suit bearing Regular Civil Suit No.1762 of 2007 before the learned 8th Civil Judge, Senior

Division, Pune, inter-alia praying for possession of the suit premises against the appellants.

4. The suit was resisted by the appellants on various grounds, including on the ground of limitation. The learned trial Judge framed three issues. Both the parties led oral as well as documentary evidence. By a judgment and decree dated 20<sup>th</sup> April, 2010, the learned trial Judge decreed the said civil suit filed by the respondent and directed the appellants to hand over possession of the suit premises to the respondent within three months from the date of the said judgment and decree. Being aggrieved by the said judgment and decree dated 20<sup>th</sup> April, 2010, passed by the learned trial Judge, the appellants herein filed an appeal (Civil Appeal No.489 of 2010) before the learned District Judge - 14 and Additional Sessions Judge, Pune.

5. The learned District Judge formulated three points for determination. By a judgment and decree dated 22<sup>nd</sup> December, 2011, passed by the learned District Judge - 14 and Additional Sessions Judge, Pune, the said Civil Appeal No.489 of 2010 came to be dismissed. Being aggrieved by the said judgment and decree passed by the learned District Judge - 14 and Additional Sessions Judge, Pune, the appellants have preferred this second appeal under section 100 of the Code of Civil Procedure, 1908.

6. Learned counsel appearing for the appellants invited my attention to the judgment and decree passed by the two Courts below and would submit that though the respondent had alleged that he was forcibly dispossessed by the appellants, the suit being under section 6 of the Specific Relief Act, 1963 and was filed after a period of six months from the date of the alleged dispossession, the learned trial Judge as well as the first appellate Court erroneously decreed the said suit instead of dismissing the said suit on the ground of limitation and maintainability of the said suit.

7. It is submitted by the learned counsel that the respondent (original plaintiff) failed to prove that the appellants had dispossessed the respondent from the suit premises. He submits that though the first appellate Court had rendered a finding that the respondent had not proved his dispossession from the suit premises, erroneously passed a decree for possession.

8. It is submitted by the learned counsel that the respondent had failed to prove that cause of action had arisen to file the suit and on that ground itself, the learned trial Judge ought to have dismissed the suit for possession filed by the respondent. He submits that the appellants were in lawful possession of the suit premises and could not have been directed to hand over possession thereof to the respondent.

9. Learned counsel for the respondent (original plaintiff) on the other hand invited my attention to various findings of fact rendered by the two Courts below and would submit that the suit filed by the respondent was not under section 6 of the Specific Relief Act, 1963 in respect of the suit premises which the respondent had permitted the appellants to occupy jointly with the respondent due to his love and affection for the appellant no.1, who is the son and the appellant no.2, who is daughter in law. He submits that the appellants had no right, title or interest of any nature whatsoever in respect of the suit premises. It is submitted that the learned trial Judge after considering the oral as well as documentary evidence had rightly come to the conclusion that the respondent was entitled to possession of the suit premises from the appellants. He submits that the first appellate Court also considered the issue whether section 6 of the Specific Relief Act, 1963 was at all applicable to the suit filed by the respondent or not and has rightly rejected the said plea raised by the appellants. He submits that the suit premises was declared as protected area by the Government and thus the suit premises being allotted to the respondent by the Government and the respondent was a protected occupier of the Government the respondent was not claiming ownership in respect of the suit premises. He submits that the suit filed by the respondent was not based on title. It is submitted

that the appellants had assaulted the respondent on 24<sup>th</sup> December, 2002 and had driven him out of the suit premises and thus the respondent had filed a suit for possession of the suit premises.

10. It is submitted by the learned counsel that the findings rendered by two Courts below are not perverse and thus cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908.

11. A perusal of the impugned judgment and decree passed by the learned trial Judge indicates that the learned trial Judge has framed three issues for determination. The learned trial Judge has considered several documentary evidence and also considered oral evidence led by both the parties. After considering oral as well as documentary evidence, the learned trial Judge has rendered a finding that the appellants had dispossessed the respondent and that the respondent was entitled to seek possession of the suit premises from the appellants.

12. A perusal of the judgment and decree rendered by the first appellate Court indicates that the first appellate Court has formulated three points for determination, including the point whether the appellants had proved that the suit filed by the respondent was barred by law of limitation or not. The first appellate Court has held that admittedly the suit premises was a slum area protected by the

Government and was under the control of Pune Municipal Corporation. The competent authority had given the permission to the respondent to file the said suit. The respondent was not the owner of the suit premises. The first appellate Court accordingly held that the suit could not be called on the basis of title and section 6 of the Specific Relief Act, 1963 had no application. The first appellate Court has rightly adverted to the judgment of the Supreme Court reported in ***AIR 1968 SC 1165 Nair Service Society Ltd. vs. Rev.Fr.K.C.Alexander*** and has held that when a party is not claiming possession on the basis of title and the suit is based on previous possession of the plaintiff, Article 64 of the Limitation Act is applicable and thus it cannot be said that the suit of the respondent was hit by the provisions of section 6 of the Specific Relief Act, 1963.

13. A perusal of the said judgment and decree of the first appellate Court indicates that after considering the evidence led by the parties and more particularly the documents such as payment of service tax, electricity bill, application for grant of photo pass etc. the first appellate court held that the suit premises were in possession of the respondent on 1<sup>st</sup> March, 1988. It is held that the respondent had given the suit premises to the appellants out of love and affection for use.

14. The first appellate Court has also considered the oral

evidence led by both the parties, including the cross-examination of the appellant no.1 in which he admitted that he had learnt the work of motor rewinding at Bombay and thereafter he returned to Pune. His marriage was performed by his father. On one hand the appellant no.1 alleged that after his marriage he started residing at Hadapsar along with his wife and on the other hand he alleged that he was residing at Hadapsar for about six months. He admitted that in the voter list in the year 2005 his name was appearing along with the name of the respondent and the name of his wife in the voter list. In the Ration Card, two addresses which were scratched were true and correct. The first appellate Court also held that one address mentioned in the Ration Card was Room No.12, Laxminagar, Yerwada and another address mentioned was S.No. 27, Munjoba Vasti, Dhanori, Pune.

15. The first appellate Court has held that the said admission on the part of the appellants corroborates the contention from the application dated 2<sup>nd</sup> December, 2002, wherein the respondent had specifically alleged that he had made arrangement for the appellants to reside at Munjoba Vasti. It is held that being father, the respondent had made efforts to provide the shelter and accommodation to the appellants. The documents produced by the respondent showed prior possession of the respondent in the suit premises. The first appellate Court also held that the documents produced by the

appellants on record were not sufficient to show that his possession in the suit premises was legal or the premises were allotted to him by the Pune Municipal Corporation. The receipts produced by the respondent on the other hand proved that he was in possession earlier than that of the appellants. It is held that the appellants had no right, title and interest to retain the suit premises and were residing in the suit premises at the mercy of the respondent. The Government or Pune Municipal Corporation had granted permission to file the suit to the respondent.

16. A perusal of the record indicates that both the Courts below have considered oral as well as documentary evidence led by both the parties and have rightly rendered a finding of fact that the respondent was in prior possession of the suit premises and had permitted the appellants to stay in the suit premises along with him due to his love and affection for the appellants, he being the father of the appellant no.1 and daughter in law of the appellant no.2 respectively. In my view these findings rendered by two Courts below being not perverse, cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908.

17. Insofar as the submission of the learned counsel for the appellants that the suit was time barred contending that the suit was filed under section 6 of the Specific Relief Act, 1963 and not having

been filed within six months from the date of the alleged dispossession is concerned, in my view, the first appellate Court has rightly rejected this contention raised by the appellants and has rightly held that the suit filed for possession of the suit premises based on the prior possession of the respondent, section 6 of the Specific Relief Act, 1963 was not applicable but Article 64 of the Limitation Act, 1963 was applicable. Both the Courts below have rightly held that the respondent was in prior possession of the suit premises and was entitled to recover possession thereof from the appellants. In my view there is thus no substance in the submission made by the learned counsel for the appellants and the same is accordingly rejected.

18. In my view, the appeal is devoid of merits. There is no substantial question of law arising in this second appeal.

19. I therefore, pass the following order :-

- a). Second Appeal No.564 of 2013 is dismissed.
- b). There shall be no order as to costs.
- c). In view of dismissal of the second appeal, Civil Application No.1314 of 2013 does not survive and is accordingly dismissed. No order as to costs.

**(R.D. DHANUKA, J.)**