

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 267 OF 2016

Suresh Ganpat Doiphode
And Anr

...Applicants

Versus

Shalini Sadanand Hanchate

...Respondent

....

Mr.Dhananjay C. Pathak, Advocate for the Applicants.

....

CORAM : R. G. KETKAR, J.

DATE : 17th OCTOBER, 2016

P.C.

1. Heard Mr.Dhananjay Pathak, learned Counsel for the applicants, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as 'defendants No.1 & 2', have challenged the judgment and decree dated 13.7.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai in 2(b)(i) Appeal No.30/2010. By that order, the Appellate Court allowed the appeal preferred by respondent No.1, hereinafter referred to as the 'plaintiff' and quashed and set aside the judgment and decree dated 11.11.2009 passed by the learned Judge, presiding over Court Room No.20 of the Small Causes Court at Mumbai in L.E. Suit

No.94/111 of 2009. The Appellate Court decreed the suit and directed the applicants (defendants No.1 & 2) to hand over the vacant and peaceful possession of room No.64, Ground floor, Modern Mills Chawl No.62, 98, Elphinstone Road, Mumbai – 400 025 (for short, 'suit premises').

3. In support of this application, Mr. Pathak strenuously contended that the learned trial Judge dismissed the suit instituted by the plaintiff for recovery of possession of the suit premises. Appellate Court reversed the said decree. Appellate Court, however, did not consider the fact that defendants No.1 & 2 have instituted declaratory suit in Small Causes Court and the same is pending. Appellate Court also did not consider the order dated 31.1.2013 passed by the learned trial Judge below Exhibit-10 in the declaratory suit filed by defendants No.1 & 2. By that order, the learned trial Judge restrained defendant No.2 (present plaintiff) from causing any disturbance, obstruction or interference in their possession over the mezzanine floor in the suit premises. He submitted that by virtue of Clause-3(b) of the operative part of the impugned order, the defendants are directed to hand over possession of the suit premises, which also includes the mezzanine floor. He submitted that the Appellate Court was not justified in overlooking the order dated 31.1.2013.

4. He submitted that the defendants No.1 & 2 had

given power of attorney and the power of attorney holder assured them that he will defend the suit on their behalf. However, the power of attorney did not file written statement and also did not participate in the trial, with the result the plaintiff's evidence remained unchallenged. He submitted that defendants No.1 & 2 should suffer because of inaction / omission on the part of their power of attorney.

5. I have considered the submissions advanced by Mr.Pathak. I have also perused the material on record. Perusal of the record shows that the suit proceeded exparte against defendants No.1 & 2 as also respondent No.2, hereinafter referred to as 'defendant No.3'. It is also evident that defendants did not participate before the trial Court, as is evident from paragraph-15 of the impugned order. Appellate Court noted that Maruti Vithoba was the monthly tenant in respect of the suit premises. Defendant No.3 being heir and legal representative of said Maruti Vithoba executed document dated 11.1.2007 in favour of the plaintiff. Appellate Court noted that defendant No.3 consented for transfer of tenancy of the suit premises in the name of the plaintiff. In paragraph-14, Appellate Court noted that the document dated 11.1.2007 is duly proved by the plaintiff as it bears thumb impression of defendant No.3. Two witnesses also signed said agreement. Said agreement also bears signature of the plaintiff. In

paragraph-16, Appellate Court also considered pendency of R.A.D. Suit No.1724/2011 instituted by defendants No.1 & 2. After considering the material on record and more pertinently the agreement dated 11.1.2007 at Exhibit-9, Appellate Court recorded a finding that the learned trial Judge ignored the document at Exhibit-9 and proceeded to hold that there was no agreement in between the transferor (plaintiff) and transferee (defendant No.3). Appellate Court also noted in paragraph-20 that in pursuance of the transfer agreement dated 11.1.2007 at Exhibit-9, the rent receipt is issued in the name of the plaintiff. Thus the landlord also accepted the plaintiff as a tenant. Electricity bill at Exhibit-11 also stands in the name of the plaintiff. In paragraph-22, Appellate Court held that defendants No.1 & 2 are gratuitous licensees in the suit premises and the plaintiff has allowed them to occupy the mezzanine floor.

6. After considering the evidence on record and more particularly the fact that the defendants No.1 & 2 did not file written statement as also did not participate in the trial, the evidence of the plaintiff remained unchallenged. Appellate Court held that the tenancy was transferred in the name of the plaintiff on the basis of document dated 11.1.2007 at Exhibit-9. The rent receipt also stands in the name of the plaintiff as also the electricity bills. Appellate Court further held that the defendants No.1 & 2 have no

better title and are gratuitous licensees in the suit premises. Defendants No.1 & 2 were not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that they are contrary to evidence on record. Defendants No.1 & 2 were not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Appellate Court. Hence no case for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)