

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.427 OF 2016

Harshada Badade-Barhate	...	Petitioner
Vs.		
Ravindra R. Wagh and others	...	Respondents

Mr. Nilesh M. Wable for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 14, 2016

P.C. :

Heard Mr. Wable, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as defendant No.4 has challenged the judgment and order dated 06.05.2015 passed by the Competent Authority under Maharashtra Rent Control Act, 1999 (for short 'Act'), Pune. By that order, the Competent Authority overruled the preliminary objection raised by the defendant No.4 and others that Competent Authority has no jurisdiction to entertain and try the application filed by the respondent No.1 under Section 42 of the Act.

3. Mr. Wable submitted that respondent No.1, hereinafter referred to as plaintiff, had entered into registered Leave and Licence Agreement dated 05.04.2003 with one Bhimrao Vishnu Badade, father of defendants No.1 to 4. The tenure of the licence agreement was from 05.04.2003 to 05.03.2004. The said Bhimrao died on 27.04.2003. Mr. Wable submitted that plaintiff thereafter instituted proceedings before the Competent Authority against the petitioner and others under Section 42 of the Act for possession of the licensed premises. On behalf of the defendants No.3 and 4, application under Section 9-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') was made inter alia contending

that they are not licensees under Section 7(5) of the At. No relationship of landlord and licensee exists between the parties and consequently, the Competent Authority has no jurisdiction to entertain and try the application filed under Section 42 of the Act. This was opposed by the plaintiff by filing reply dated 08.01.2013. Plaintiff asserted that the respondents are the legal heirs of late Bhimrao V. Badade. The said fact is also admitted by the respondents in paragraph 3 of the application. As they are the legal representatives of late Bhimrao, they are made parties in the proceedings.

4. By order dated 28.01.2013, the Competent Authority framed following preliminary issue:

“Whether this Court of Competent Authority has jurisdiction to entertain and decide the application (exh.1) filed by the applicant?”

5. By the impugned order, the Competent Authority held that it has jurisdiction to entertain and try the application.

6. Mr. Wable submitted that the respondents before the Competent Authority are not the licensees. He relied upon Section 7(5) of the Act which defines the expression 'licensee'. The said expression specifically excludes a member of the family residing together. Thus, the respondents before the Competent Authority are excluded from the expression 'licensee'. There is no relationship of licensor and licensee between the parties and consequently, the Competent Authority has no jurisdiction to entertain and try the proceedings under Section 42. He also relied upon the decision of Madras High Court in the case of **Chinnan Vs. Ranjithammal, AIR 1931 Madras 216** to contend that if a man gives a licence and then parts with the property over which the privilege is to be exercised, the license is gone.

7. I have considered the submissions advanced by Mr. Wable. I have also perused the material on record. It is not in dispute that the plaintiff had entered into registered Leave and Licence Agreement with Bhimrao Badade on 05.04.2003. Licensed period is from 05.04.2003 to 05.03.2004. It is also not in dispute that Bhimrao died on 27.04.2003. Plaintiff filed application under Section 42 of the Act before the Competent Authority. In paragraph 4, plaintiff specifically asserted that defendants No.1 to 4 are the legal heirs and in occupation of 10 rooms which is the subject matter of the present proceedings. Respondents No.3 and 4 before the Competent Authority filed application under Section 9-A of C.P.C. In paragraph 3 of that application, it is asserted that respondent No.3 is in possession of the property being legal heir of licensee Bhimrao Badade who expired on 27.04.2003.

8. Section 2(11) of C.P.C. defines the expression “legal representative” to mean a person in law representing the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the state devolves on the death of the party so suing or sued.

9. Section 7(4) of the Act defines the expression “legal representative” to mean a legal representative as defined in the C.P.C. and includes also, in the case of joint family property, the joint family of which the deceased person was a member.

10. Mr. Wable relied upon definition of 'licensee' in Section 7(5) of the Act which does not include a member of the family residing together. He, therefore, submitted that respondents before the Competent Authority fall in this category and therefore, will not be included in the expression “licensee”. It is not possible to accept this

submission for more than one reason. In the first place, Section 52 of the Indian Easements Act, 1882 (for short 'Easements Act') defines “license” as under:

“52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.”

11. Perusal of paragraph 9 of the application filed by the plaintiff under Section 42 of the Act shows that plaintiff had executed a Leave and License Agreement dated 24.03.2003 with Bhimrao Badade. In paragraph 4, it is asserted that defendants No.1 to 4 are the legal heirs of Bhimrao. Defendant No.3 is in actual possession of the said 10 rooms being the legal heir of late Bhimrao Badade, who was the original licensee. In paragraph 10, it is asserted that Bhimrao died on or about 27.04.2003. After the death of Bhimrao, his family members were occupying the premises. The licensed period expired on 23.02.2004 and since then the license granted came to an end and expired. In other words, it is evident that after the death of Bhimrao, plaintiff permitted defendants No.1 to 4 to occupy the premises which in fact amounts to license as defined under Section 52 of the Easements Act.

12. In the proceedings filed by the plaintiff under Section 42 of the Act, it is specifically asserted that Bhimrao had expired and defendants No.1 to 4 are the legal heirs and in occupation of 10 rooms. Even respondents No.3 and 4 admitted in paragraph 3 of the application filed under Section 9-A of C.P.C. that they are legal heirs of deceased Bhimrao. Thus, the respondents before the Competent Authority are clearly included in the expression “license” as defined under Section 52 of the Easements Act.

13. In the case of ***Prabhudas Damodar Kotecha vs. Manhabala Jeram Damodar***, 2013 (15) SCC 358, the Apex Court had considered definition of 'licensee' appearing in the Act and the definition of 'licensee' in Section 52 of the Easements Act and has held in paragraphs 43 to 46 as under,

“43. Let us now examine the definition of “licence” under Section 52 of the Indian Easement Act which provides that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful and such right does not amount to easement or an interest in the property, the right is called a licence. This Court in *State of Punjab v. Brig. Sukhjit Singh* (1993) 3 SCC 459 has observed that “payment of licence fee is not an essential attribute for subsistence of licence. Section 52, therefore, does not require any consideration, material or non material to be an element, under the definition of licence nor does it require the right under the licence must arise by way of contract or as a result of a mutual promise.

44. We have already referred to Section 52 of the Indian Easement Act and explained as to how the legislature intended that expression to be understood. The expressions “licensor” and “licensee” are not only used in various statutes but are also understood and applied in various fact situations. The meaning of that expression “licence” has come up for consideration in several judgments. Reference may be made to the judgment of this Court in *C.M. Beena and Anr. v. P.N. Ramachandra Rao* (2004) 3 SCC 595, *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit* (1971) 1 SCC 276, *Union of India (UOI) v. Prem Kumar Jain and Ors.* (1976) 3 SCC 743, *Chandy Varghese and Ors. v. K. Abdul Khader and Ors.* (2003) 11 SCC 328.

45. The expression “licensee” has also been explained by this Court in *Surendra Kumar Jain v. Royce Pereira* (1997) 8 SCC 759. In *P.R. Aiyar's the Law Lexicon*, Second Edition 1997, License has been explained as “A licen0se in respect to real estate is defined to be an authority to do a particular act or series of acts on another's land without possessing any estate therein”. The word “licensee” has been explained in *Black's Law Dictionary*, Sixth Edition to mean a person who has a privilege to enter upon land arising from the permission or consent, express, or implied, of the possessor of land but who goes on the land for his own purpose rather than for any purpose or interest of the

possessor. Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol. 2 provides the meaning of word "licensee" to mean a licensee is a person who has permission to do an act which without such permission would be unlawful.

46. We have referred to the meaning of the expressions "licence" and "licensee" in various situations rather than one that appears in Section 52 of the Indian Easement Act only to indicate that the word licence is not popularly understood to mean that it should be on payment of licence fee, it can also cover a gratuitous licensee as well. In other words, a licensor can permit a person to enter into another's property without any consideration, it can be gratuitous as well."

14. Having regard to the definition of the 'legal representative' appearing in Section 2(11) of C.P.C. read with Section 7(4) of the Act, in my opinion, the plaintiff has permitted defendants No.1 to 4 to occupy the suit premises after the death of their father. In other words, they are the licensees in the suit premises. In view thereof, it cannot be said that the Competent Authority has no jurisdiction to entertain and try the application. The reliance placed by Mr. Wable on the decision of the Madras High Court in the case of **Chinnan** (*supra*) is not applicable to the facts of the present case as it is not the case of the petitioner that plaintiff is no longer licensee of the suit premises. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)