

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 25 OF 2017
AND
CIVIL APPLICATION NO. 10833 OF 2016

Mannibai Kanha Gavali
deceased

1] Chhotu Kanha Gavali,
Age : 65 years, Occu.: Milkman,

2] Jumma Kanha Gavali,
Age : 60 years, Occu.: Milkman,

Both R/o. Near Mamaji Talkies,
Gavali Wada, Bhusawal,
Dist. Jalgaon

.. Appellants
(Orig. Defendants)

VS.

Laxmibai Fazal Gavali,
Age : 75 years, Occu.: Housewife,
R/o : Gavali Wada, Near Mamaji Talkies,
Bhusawal, Dist. Jalgaon

.. Respondent
(Orig. Plaintiff)

Mr. N.S. Shah, Advocate h/f Mr. S.V. Natu, Advocate for appellants
Mr. S.S. Patil, Advocate for the respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 12-04-2017

ORAL JUDGMENT :

1. The appellants purport to challenge two concurrent decisions rendered hitherto by the trial and appellate courts.

2. Learned counsel for the appellants strenuously urges to consider that the plaintiff has not been able to conclusively establish her title to suit property, and, further the theory developed by the plaintiff is about relationship of licensor and licencees amongst the parties. In such a case, civil court had no jurisdiction to entertain the suit, and, the suit ought to have been dismissed for want of jurisdiction.

3. He particularly refers to section 15A(2) of the then operative Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, reading thus,

“ 15A. Certain licensees in occupation on 1st February 1973 to become tenants

(1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid. ”

4. He further contends that the plaintiff herself in the cross-examination revealed that her title to be of tenant, and, in the circumstances, licence by her hardly be sustainable in law.

5. Mr. S. S. Patil, learned counsel appearing for the respondent - plaintiff contends that to answer the last contention first that the stray reference to herself as tenant may not tilt the scale in favour of appellants - defendants in any case. Learned counsel submits that there is overwhelming other evidence available on record which shows the plaintiff is the title holder of the property along with her son and daughter. He further submits that the plaintiff has specifically pleaded about licence being gratuitous, and, thus, the provisions of section 15A(2) with reference to which argument is being advanced about incompetency of civil court to deal with the subject matter, would hardly have any substance. He, for said purpose, purports to rely on section 5(4A) of the then operative Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, reading, thus,

“ 5(4A) "licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a

building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor, or a person having any accommodation for rendering or carrying on medical or para medical services or activities in or near a nursing home, hospital or sanitorium, or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanitorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of the exigencies of service or provision of a residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increases for such premises, and any additional sum for services supplied with such premises, or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor " and "premises given on licence" shall be construed accordingly; ”

6. He submits that the evidence sufficiently bears out that the plaintiff is indeed a title holder, and, the relationship through whom title is claimed, is not at all disputed. In the circumstances, plaintiff being title holder, is indisputably entitled to possession.

7. Perusal of judgments and after going through the relevant material with the assistance of learned counsel for the parties from the record, the position emerges that indisputably, the suit property originally had been in ownership and occupation of Ibrahim Ramju, who was unmarried. He was survived by his brother Hassan Ramju, and, as such, the property went to Hassan Ramju. Hassan Ramji left behind his son Fazal Hassan, who happens to be husband of plaintiff. Fazal Hassan too died, leaving behind him plaintiff, one son and one daughter, namely, Hassan and Malanibai, respectively. This relationship has not been disputed by the appellants - defendants, and, the plaintiff has contended that her son and daughter had duly authorised her to initiate proceedings against the defendants.

8. Further, it is the defendants' case that suit property had been taken on rent at the rate of Rs.10/- from the original owner - mother of Ibrahim Ramju, and, that they had paying rent accordingly to her.

9. The defendants had not entered the witness box in defence to prove the case stated by them nor the defendants appear to dispute that Ibrahim Ramju was the original owner of the suit property.

10. The courts hitherto with reference to the evidence that has been led on behalf of the plaintiff, have considered that the plaintiff has been able to establish her nexus to the suit property. The property record, to quite a large extent, continued to show name of Ibrahim Ramju, yet, intermittently, there appears some record depicting that taxes in respect of the same were being paid by son of his brother i.e. Fazal Gavali. Further, during the pendency of the proceedings, the property too came to be recorded in the name of the plaintiff and her son and daughter.

11. Apart from aforesaid, in the absence of any evidence on behalf of the defendants about their claim of being tenants over suit property, no credence can be given to the defence being taken.

12. Aforesaid apart, the case of the plaintiff about licence being gratuitous has not been met with and rebutted by any credible material on behalf of the defendants.

13. In the circumstances, the question being raised about jurisdiction and competence of civil court to deal with matter also stands razed to the ground.

14. It does not appear that the second appeal raises any substantial question of law worth consideration.

15. Second appeal fails and stands dismissed.

16. Consequently, civil application no. 10833 of 2016 seeking stay to the impugned judgments and orders, also stands disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/