

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 751 OF 2014
WITH
CIVIL APPLICATION NO. 13225/2014

GANGUBAI LAXMAN POTLE (DIED)
THROUGH LRS MADHUKAR LAXMAN POTLE
VERSUS
YASHWANT SHANKAR PATIL AND OTHERS

Advocate for Applicant : Shri P.R. Katneshwarkar.
Advocate for Respondent Nos. 1 to 5 : Shri S.S. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 18th August, 2017

PER COURT :

1. The petitioner is aggrieved by the judgment of the Trial Court dated 20/02/2007, by which, Regular Civil Suit No. 01/2001, has been decreed and the appellant herein (original defendant) was directed to handover the vacant and peaceful possession of the hut in final plot No. 200/90. The appellant is also aggrieved by the judgment dated 09/07/2014, delivered by the appellate court, by which, Regular Civil Appeal No. 65/2014 (Old No. 76/2007) filed by the appellant herein has been dismissed.

2. I have considered the strenuous submissions of Shri Katneshwarkar, learned advocate for the appellant and Shri Patil, learned advocate appearing on behalf of respondent Nos. 1 to 5.

3. Gangubai Laxman Potle was the original defendant in the suit preferred by deceased Shankar Totaram Patil. The said suit was for recovery of possession. It was contended by Shankar that he had a hut in plot No. 200/90 having House No. 6/343 in City Survey No. 4784/A/1. Deceased Gangubai was performing domestic work for Shankar and had no place to reside. She was a widow and had a child by name Madhukar, who is now the appellant herein. Shankar permitted Gangubai to stay in a tin shed in the corner of the North side as she was doing domestic work for Shankar and his family.

4. Shankar preferred the Regular Civil Suit for seeking recovery of the possession of that portion of the suit plot which was occupied by Gangubai. Gangubai took a stand that she was a tenant and as such, unless the dispute between the

landlord and the tenant is not resolved by the competent Court having jurisdiction to decide a tenancy suit, the Trial Court should not proceed with the suit filed by him.

5. Since, the Trial Court noticed that prima facie, there was no evidence at all to indicate a tenancy issue, it proceeded to frame a issue, as to whether Gangubai proves that she is the tenant in the suit property.

6. Learned counsel for the appellant has strenuously submitted that Gangubai had preferred a proceeding before the Trial Court, by which, she was depositing monthly rent of Rs. 15/-. Since, she was permitted to deposit the said amount as rent, it is established that she was a tenant. Learned counsel for the respondent's LRs of original plaintiff submits that merely because the Trial Court permitted Gangubai to deposit the amount in the Court, tenancy rights would not be created in her favour by the act of the Court.

7. It is trite law that the act of the Court would not cause

prejudice to any litigating side. The argument of the appellant cannot be accepted that because the Court permitted Gangubai to deposit amount in the Court, it would conclusively decide issue that Gangubai was the tenant. Such a leave to deposit amount in the Court would not create equity in favour of Gangubai. It is always without prejudice to the rights of the litigating parties that Gangubai was allowed to deposit the said amount.

8. Gangubai had also preferred a Criminal Case No. 2276/1988 against Shankar, alleging that he was not issuing any rent receipt. The Court dealing with the said Criminal case acquitted Shankar by it's judgment dated 17/12/1999, after concluding on the basis of the evidence that Gangubai could not establish that she was a tenant and was paying rent to Shankar, would legally oblige Shankar to issue a rent receipt.

9. In the Regular Civil Suit filed by Shankar, it was established that Gangubai could not prove that she was a tenant. Though, she was depositing the amount under her

application titled as Rent Application No. 59/1990, the Trial Court concluded there was no agreement or contract or even by conduct that Gangubai could establish that she was the tenant.

10. Madhukar, son of the deceased Gangubai, has admitted in his evidence that Gangubai was working in the house of Shankar. There was no evidence brought on record that Gangubai was occupying the tin shed as a tenant and was regularly paying rent to Shankar. Madhukar also took a stand that Gangubai had a sale deed in her favour as she had purchased a portion of the said plot. No such sale deed was proved before the Trial Court and even this stand of Madhukar was rejected by the Trial Court.

11. While dealing with the appeal filed by Madhukar after the demise of Gangubai, the appellate Court revisited the entire evidence recorded before the Trial Court. Yet another contention of original defendant/Gangubai that one portion of the plot was purchased from Suryaji Naik Nimbalkar, alleged owner of the plot, was also rejected on the basis of evidence and

it was established that Shankar was a tenant of Kanji Devji with the agreement to pay Rs. 80/- per year as a rent. It was, therefore, established that Shankar Totaram was not the owner of the plot at issue.

12. Learned counsel for the original plaintiff has placed reliance upon the judgment of the Hon'ble Supreme court in the matter of Prabhudas Damodar Kotecha and others Versus Manhabala Jeram Damodar and another **[2013 AIR (SC) 2959]**.

He has canvassed the theory of gratuitous licensee. He, therefore, submits that the contention of the appellant that the bar of Section 47 of the Maharashtra Rent Control Act would preclude the Trial Court from dealing with the suit, is unsustainable.

13. It would be apposite to reproduce the conclusions arrived at by the Hon'ble Apex Court below paragraph No. 40 to 47 as under :

“Contemporenea Expositio

40. Contemporenea Expositan is the best and most

powerful law and it is a recognized rule of interpretation. Reference may be made to the judgments of this Court in National and Grindlays Bank Ltd. v. The Municipal Corporation of Greater, Bombay (1969) 1 SCC 541 and The Tata Engineering and Locomotive Company Ltd. v. Gram Panchayat (1976) 4 SCC 177.

41. We notice in the instant case that the concept of licence and lease were dealt with by contemporary statutes – Indian Easement Act, Transfer of Property Act and Section 41 of the PSCC Act and, as already indicated, all those statutes were enacted in the year 1882. Therefore, Section 41(1) of the PSCC Act could not have been contemplated any other meaning of the term “occupation with permission” but only the permission as contemplated by Section 52 of the Indian Easements Act. The PSCC Act is a procedural law and as already indicated, the expression “licensor” and “licensee” or “landlord” and “tenant” used in Section 41 of the PSCC Act (as amended by Maharashtra Act No. XIX of 1976) relate to immovable property and Section 52 of the Indian Easements Act which defines a licence has an inseparable connection to immovable property and property law. Legislature was well aware of those contemporaneous statutes, that was the reason, why the expression licence as such has not been defined in the PSCC Act with the

idea that the expression used in a contemporaneous statutes would be employed so as to interpret Section 41 of the PSCC Act. Above-mentioned principle, in our view, would apply to the instant case.

Licensor – Licensee

42. The PSCC Act, as already indicated, does not define the expression “licensor” and “licensee”. Both these expressions find a place in Section 41(1) of the PSCC Act. Section 41(1) confers jurisdiction on Court of Small Causes to entertain and try all the suits and proceedings between a “licensor” and a “licensee” relating to recovery of possession of any immovable property or relating to recovery of licence fee. Section 5(4A) of the Rent Act defines the term “licensee” so also Section 52 of the Indian Easement Act, 1882. Sub-section (4A) of Section 5 of the Rent Act provides that “licensee” means a 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”. The definition of “licensee” under sub-section (4A) of Section 5 is both exhaustive as well as inclusive. But it is relevant to note that the licensee under sub-section (4A) must be a licensee whose licence is supported by material consideration meaning thereby a gratuitous licensee is not covered under the definition of licensee under sub-

section (4A) of Section 5 of the Rent Act.

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 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. Aiyars the Law Lexicon, Second Edition 1997, License has been explained as “A license 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 possession any estate therein”. The word “licensee” has been explained in Blacks 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. Strouds 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.

47. We have already indicated the expression “licence” as reflected in the definition of licensee under sub-section (4A) of Section 5 of the Rent Act and Section 52 of the Indian Easement Act are not *pari materia*. Under sub-section (4A) of Section 5, there cannot be a licence unsupported by the material consideration whereas under Section 52 of the Indian Easement Act payment of licence fee is not an essential requirement for subsistence of licence. We may indicate that the legislature in its wisdom has not defined the word “licensee” in the PSCC Act. The purpose is evidently to make it more wide so as to cover gratuitous licensee as well with an object to avoid multiplicity of proceedings in different courts causing unnecessary delay, waste of money and time etc. The object is to see that all suits and proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent

or licence fee irrespective of the value of the subject matter should go to and be disposed of by Small Cause Court. The object behind bringing the licensor and the licensee within the purview of Section 41(1) by the 1976 Amendment was to curb any mischief of unscrupulous elements using dilatory tactics in prolonging the cases for recovery of possession instituted by the landlord/licensor and to defeat their right of approaching the Court for quick relief and to avoid multiplicity of litigation with an issue of jurisdiction thereby lingering the disputes for years and years.”

14. Considering the above, since the appellant could not establish any semblance of tenancy between Gangubai and Shankar, I do not find any substantial question of law involved in the present Second Appeal. Consequentially, the Second Appeal being devoid of merits is, therefore, dismissed. The pending Civil Application does not survive and stands disposed of.

15. Learned Advocate for the appellants seeks some protection against vacating the premises. A categorical statement

is made by the appellants that they would vacate the suit premises within the time as this Court may grant. It is further stated that the Trial Court has already granted one month's protection to the appellants from 02/08/2017 to 01/09/2017. It is, therefore, stated that, the suit premises would be vacated. A request is made to give some more time if possible, beyond 01/09/2017.

16. Learned Advocate for the respondents submits that the appellant Madhukar S/o. deceased Gangubai is a retired Central Railway Employee and has a constructed house in the name of his family member and resides in the said house. The tin shed, which is 10 x 8 feet, is in a locked condition for several years.

17. Considering the same, the request of the appellant is recorded. He would vacate the premises on/or before 01/09/2017.

(RAVINDRA V. GHUGE, J.)