

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 801 OF 2016

Sk. Nazir s/o Sk. Munir,
Age : 57 years, Occu. Business,
R/o Mominpura, Near national Garage,
Aurangabad

APPELLANT
(Orig. Defendant)

VERSUS

Shaikh Jabiruddin @ Raees
s/o Sk. Shafiuddin,
Age : 47 years, Occu. Business,
R/o Town Hall, Noor Colony,
Aurangabad

RESPONDENT
(Orig. Plaintiff)

Mr. V.J. Dixit, Senior Advocate instructed by
Shaikh Mujtaba Gulam Mustafa, Advocate for the Appellant
Mr. P.V. Mandlik, Senior Advocate instructed by
Mr. P.P. Mandlik, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 31st JULY, 2017

ORAL ORDER :

The original defendant has challenged the judgment and decree dated 29th August, 2016 passed in Regular Civil Appeal No.329 of 2011 by the learned District Judge-11, Aurangabad whereby he confirmed the judgment and decree dated 20th October, 2011, passed in Regular Civil Suit No.949 of 2002 by the learned 3rd Joint Civil Judge, Junior Division, Aurangabad whereby the suit was decreed.

2. The suit property admittedly is the wakf property. The appellant was inducted in the suit property as a tenant. It is the case of the respondent that the appellant executed an agreement of leave and licence on 18th February, 1992 and permitted him to run the business in the name and style as "New Diamond Watch Company" in the suit property. However, the appellant abruptly locked door of the suit property and tried to disturb possession of the respondent thereon without following due process of law. Therefore, the respondent filed the above numbered suit seeking the relief of injunction restraining the appellant from disturbing his possession thereon without due process of law and further for restoration of possession of the suit property as was with the respondent at the time of filing of the suit by opening the lock.

3. The Trial Court decreed the suit. The first appeal preferred by the present appellant came to be dismissed. As such, there are concurrent findings of facts by the Trial Court and the First Appellate Court.

4. The learned Senior Counsel for the appellant submits that since the dispute was related to the wakf

property, in view of the provisions of Section 85 of the Wakfs Act, 1995, the Civil Court had no jurisdiction to entertain and try the said suit. He then submits that prior to filing of the suit in respect of the wakf property, it was necessary to issue notice to the Board vide Section 90 of the Wakf Act. No such notice was issued by the respondent prior to filing of the suit. He then submits that the leave and licence agreement in respect of the suit property was not registered and therefore, the finding of the Trial Court as well as the First Appellate Court that the suit property was given to the respondent on leave and licence cannot be said to be legal. He submits that these are the legal points which are not considered by the Trial Court and the First Appellate Court and they are required to be considered in this Second Appeal.

5. On the other hand, the learned Senior Counsel for the respondent submits that the grounds of objection to the jurisdiction of the Civil Court was not taken by the appellant before the Trial Court. Moreover, in view of the judgment in the case of **Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf 2010 ALL SCR 2346**, cited by the learned Counsel for the appellant

himself, since the dispute involved in this suit was between the tenant of the property and his licensee and not in respect of the nature of the wakf property, the Civil Court only had jurisdiction to entertain and try the suit. He then submits that the ground in respect of issuance of notice under section 90 of the Wakf Act also is not applicable to the present suit since the dispute is not between the wakf and the respondent. He further submits that the leave and licence agreement was rightly upheld by the Trial Court and the First Appellate Court. The registration of the leave and licence agreement has been made compulsory by the Maharashtra Rent Control Act, 1999. However, since the leave and licence agreement executed by the appellant in favour of the respondent was of the year 1992, it was not compulsorily registrable at that time. He submits that there are concurrent findings of the Trial Court as well as the First Appellate Court. No substantial question of law is involved in this appeal.

6. So far as the question of jurisdiction is concerned, the judgment in the case of **Ramesh Gobindram (dead) through Lrs.** (supra), would make the legal position sufficiently clear in respect of jurisdiction

of the Civil Court to entertain the suit for eviction of the tenants/licencees from the wakf property. The said judgment has been referred to by the First Appellate Court in paragraph No. 41 of its judgment. In that case, the question was whether the Wakf Tribunal constituted under Section 83 of the Wakfs Act, 1995 was competent to entertain and adjudicate upon disputes regarding eviction of the appellants who were occupying different premises which admittedly were wakf properties. The Wakf Tribunal, before whom the suit for eviction of the tenants were filed, answered the question regarding its jurisdiction in the affirmative and decreed the suit filed against the appellant. Aggrieved by the said orders, the appellants filed Revision Petitions before the High Court of Andhra Pradesh, inter alia, contending that the Tribunal was in error in assuming jurisdiction and directing their eviction. Dismissal of the Revision Petitions by the High Court led to the filing of the appeals before the Hon'ble the Apex Court. The said appeals came to be dismissed holding that the suit seeking eviction of tenants from the wakf property can be filed only before the Civil Court and not before the Wakf Tribunal. The observations of the Hon'ble the Apex Court in paragraph

No. 18 of the judgment, so far as they are relevant for the decision of this question, are as under:-

"18..... Section 85 of the Act clearly bars jurisdiction of the Civil Courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of Civil Courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the Civil Court does not fall within four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred.

7. In the present case, the dispute is not in respect of the nature of the wakf property falling under Sections 6 and 7 of the Wakf Act. It is a dispute between the tenant of the wakf property and the licensee of that tenant. Consequently, the dispute certainly can be entertained by the Civil Court in view of the judgment in the case of **Ramesh Gobindram (dead) through**

Lrs. (supra). Moreover, as observed by the First Appellate Court, the question of jurisdiction was not raised by the appellant before the Trial Court. In any case, the jurisdiction of the Civil Court to entertain and try the said suit cannot be said to be ousted.

8. For application of Section 90 of the Wakf Act, again the suit should relate to the question of title or possession of a wakf property or the right of mutawalli or beneficiary. As stated above, in the present case, no such dispute is involved. Therefore, the provisions of Section 90 are not at all attracted to the facts of the present case.

9. The third question is about admissibility of the leave and licence agreement. The said agreement is of the year 1992. The First Appellate Court has rightly observed that there was no provision in the Registration Act in 1992 which made it compulsory to register leave and licence agreement. It was made compulsorily registrable for the first time under the provisions of the Maharashtra Rent Control Act, 1999 which were not made applicable with retrospective effect. Since the agreement was executed much prior to coming into force of that Act, the leave and licence agreement, though was

not registered, the Trial Court and the First Appellate Court have rightly held it to be admissible. The contention regarding inadmissibility of the leave and licence agreement raised on behalf of the appellant also is not acceptable.

10. No substantial question of law is involved in this appeal. The concurrent findings of facts recorded by the Trial Court as well as the First Appellate Court need no reconsideration since they are based on the evidence on record. The Second Appeal is, therefore, dismissed. No costs.

11. The learned counsel for the appellant seeks stay to the execution of the decree passed by the Trial Court in order to enable the appellant to challenge this order before the Hon'ble the Apex Court. The learned counsel for the respondent objected to grant of stay. However, in the interest of justice, stay to the execution of the decree passed by the Trial Court for a period of four weeks from today is granted.

[SANGITRAO S. PATIL]
JUDGE