

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 278 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 614 OF 2015

Anilkumar Arjun Jadhav

...Appellant

vs.

Nandkumar Arjun Jadhav

...Respondent

Mr. Jaydeep Deo for the Appellant .

Mr. V.S. Gokhale for the Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 20th JULY, 2017

P.C.

1. The Respondent is the original Plaintiff who has filed Regular Civil Suit No. 108 of 2003 before the Learned Civil Judge, Senior Division, Pune, at Pune, for perpetual injunction against the Appellant/Defendant restraining him from use of the suit premises and from coming to the suit premises. According to the Respondent/Plaintiff, he is the sole owner of the suit property being Room No. 102, Parvati Darshan Chawl, Pune. The Appellant is his brother and as he was not having any residential house, the Respondent/Plaintiff allowed the Appellant/Defendant to reside in the suit property as a gratuitous licensee. Since the Appellant/Defendant refused to vacate the suit premises despite receiving

notice from the Respondent/Plaintiff, R.C.S. No. 108 of 2003 was filed by the Respondent/Plaintiff before the Civil Judge, Senior Division, Pune, seeking perpetual injunction against the Appellant/Defendant as stated hereinabove.

2. The Appellant/Defendant opposed the suit by filing his written statement. The Appellant/Defendant pleaded that, the father of the Plaintiff and the Defendant was working in State Transport Corporation; after the death of their father, their family (i.e. the Plaintiff, Defendant and their mother) received an amount of Rs. 1,35,000/- as gratuity; the suit premises were purchased out of the said amount of gratuity from one Muktabai Pawar for consideration of Rs. 40,000/- and therefore the suit property is joint family property. The Appellant/Defendant also raised the issue of jurisdiction before the Trial Court and submitted that since the Respondent/Plaintiff has contended that the Appellant/Defendant is using the suit premises as gratuitous licensee, the suit should be filed only before the Small Causes Court.

3. Both parties led oral as well as documentary evidence.

4. The Learned Civil Judge, Senior Division, Pune ('Trial Court') framed several issues including the issue of jurisdiction. The Learned Trial Court after hearing the Advocates for the parties held that the Respondent/Plaintiff has come with the case that the status of the Appellant/Defendant is that of a gratuitous licensee/permissive possession; that the Full Bench of this Court has in its Judgment in the case of *Prabhudas*

*Damodar Kotecha and another vs. Smt. Manharbala Jeram Damodar and other*¹, observed that Section 41 (1) of the Presidency Small Causes Courts Act, 1882 mandates that the jurisdiction to hear a dispute between a licensor and licensee or a landlord and tenant is with the Small Causes Court and has further held that, *"the expression "licensee" used in Section 41 (1) of the Presidency Small Cause Courts Act does not derive its meaning from the expression "licensee" as used in sub-section (4-A) of Section 5 of the Bombay Rent Act. The expression licensee used in section 4 (1) is a term of wider import so as to mean and include a "gratuitous licensee" also. In view of this, suit by a licensor against a gratuitous licensee is tenable before the Presidency Small Cause Court under Section 41 of the Presidency Small Cause Courts Act"*. Therefore the learned Civil Judge, Senior Division, vide his Judgment and Order dated 3rd December, 2010, dismissed the Regular Civil Suit No. 108 of 2003 with costs.

5. The Respondent/Plaintiff thereafter challenged the Judgment and Order dated 3rd December, 2010, passed by the Trial Court, before the learned District Judge, Pune, by filing Civil Appeal No. 287 of 2011.

6. The Adhoc District Judge-4, Pune, after hearing the Advocates for the parties and perusing the evidence on record, reversed the finding of the Trial Court and decreed the suit. The Learned Judge in paragraph No. 13 of the Judgment has held that, *"so far as Pune is concerned, Presidency Small Causes*

1 2007 (5) Mh. L.J. 341

Court Act is not applicable. The Small Causes Court in Pune is governed by the provisions of Provincial Small Causes Court Act, 1887, there is no express provision conferring jurisdiction on the Small Causes Court to try the suits in respect of licensor and licensee or the person in permissible possession". The Learned Judge in paragraph 14 of the Judgment observed that, "*had the provisions of Presidency Small Causes Courts Act, 1882, were applicable to the present suit premises, then the Ld. Trial Judge was right in observing that Small Causes Court, Pune has jurisdiction to try the suit. Since it is not the case, the finding of the Ld. Trial Judge is against the legal provisions.*" It was finally observed in paragraph no. 16 of the Judgment that, "*when the provisions of the Provincial Small Causes Courts Act are not attracted in the present case, they do not confer jurisdiction on Small Causes Court in respect of this kind of suit and also the fact that the Judgment of Bombay High Court in Prabhudas Damodar Kotecha and another vs. Smt. Manharbala Jeram Damodar and others (supra) is not applicable. The Judgment and Decree passed by the Ld. Trial Judge is not proper and legal and therefore requires interference by this Court.*" In the light of the aforesaid observations, the Learned Adhoc District Judge-4, Pune allowed the Appeal and decreed the suit filed by the Respondent/Plaintiff. The Learned Judge also held that even if the finding of the Trial Court concluding that the Small Causes Court, Pune has jurisdiction is considered correct, then in that case, the right course of action on the part of the Trial Court would have been to return

the Plaint as per Order 7 Rule 10 of the Code of Civil Procedure, because when the Court has come to a conclusion that a specific forum has jurisdiction, then it ought to have returned the plaint instead of dismissing the suit, which in fact results in rejection of the Plaint.

7. The Appellant/Defendant has thereafter preferred the aforesaid Second Appeal No. 278 of 2015. The said Second Appeal came to be admitted on 6th July, 2017, on the following substantial question of law:

"Whether the Appellate Court in the first Appeal erred in not following the decision of the Bombay High Court in the case of Subhash Stnarayan Joshi and anr. vs. Mohd. Sultan Abdul Gani and Anr. 2006 (supp.) Bom. C.R. 605.?"

8. Today, the Second Appeal is taken up for hearing and final disposal. I have heard the Learned Advocates for the parties.

9. This Court in the case of *Subhash Stnarayan Joshi and another vs. Mohd. Sultan Abdul Gani and another*² has had the opportunity to compare the provisions of the Presidency Small Causes Courts Act, 1882 and the Provincial Small Cause Courts Act, 1887. In paragraph 9 of the said Judgment this Court has held as follows:

" However, that only brings language in Section 41 (1) of Presidency Act on line with language of Section 26 (1) of Act and does not in any way affect the interpretation of

² 2006 (Supp.) Bom. C.R. 605

*phrase/terminology "relating to the recovery of possession" appearing therein. Comparison of both these sections reveal that they are identically worded. Clause 17 in Schedule II of Act excepts suit to obtain an injunction from jurisdiction of Small Causes Court. Similarly Section 19 of Presidency Small Causes Courts Act vide its Clause (i) excepts suits to obtain an injunction from jurisdiction of Small Causes Court functioning under that Act. Thus, the provisions in both these Acts are *pari materia* and interpretation on words "relating to the recovery of possession" in Section 41 (1) applies with full vigour to Section 26 (1) of the Act. The provisions of Act quoted above leave no manner of doubt that an exclusive forum and procedure has been prescribed for ventilation of all grievances between landlord and tenants or licensors and licensees, as the case may be."*

10. Thus this Court in the Judgment of Subhash Stnarayan Joshi and anr. Vs. Mohd. Sultan Abdul Gani and another (supra), has held that the provisions of the Presidency Small Causes Courts Act, 1882 and the provisions of Provincial Small Cause Courts Act, 1887 are *pari materia* and the provisions of the Provincial Small Causes Courts Act, 1887 leaves no manner of doubt that an exclusive forum and procedure has been prescribed for ventilation of all grievances between landlord and tenants or licensors and licensees, as the case may be. Therefore the Judgment in the case of Prabhudas Damodar Kotecha and another vs. Smt. Manharbala Jeram Damodar (supra) will apply in full force

to the suit properties situated within the Municipal area of Pune and to which the Provincial Small Cause Courts Act, 1887 is applicable. In other words, Small Cause Court at Pune will have jurisdiction to hear and decide a suit filed against gratuitous license for possession of suit premises situated at Pune and not the Civil Court. Therefore the impugned Judgment of the District Court holding that the Small Causes Court at Pune will not have jurisdiction to decide a suit in respect of the licensor and licensee or the person in permissive possession since in the Provincial Small Cause Courts Act, 1887, there is no express provision conferring jurisdiction on the Small Causes Court to try suits in respect of licensor and licensee or the person in permissive possession, is incorrect and is accordingly set aside.

11. The Learned Adhoc District Judge-4, Pune has in his impugned Judgment also observed that, "*Even, if finding of the trial Court to conclude that the Small Causes Court, Pune has jurisdiction is considered correct then in that case right course of action on the part of the Trial Court was to return the Plaint as per Order 7 Rule 10 of the Code of Civil Procedure, because when the Court has come to a conclusion that specific forum has jurisdiction, then it ought to have returned the Plaint instead of dismissing the suit, which in fact result in rejection of the plaint.*" The said finding is also liable to be set aside in light of the Judgments in the cases of (i) *Asif Ahmedally Porbunderwalla vs. Daulat*

*Akbarali Porbunderwalla*³; (ii) *Lt. Col. Anil Bhat & Ors, vs, Citibank N.A.*⁴ and (iii) *Raizada Topandas & another vs. Gorakhram Gokalchand*⁵. It is settled law that the plaint can be returned to be filed in the proper court, only if the court finds that it has no pecuniary or territorial jurisdiction. If the Court finds that it has no jurisdiction to try the subject matter of the suit, then the Court is left with no option but to dismiss the suit in its entirety.

12. In view of the above, the Second Appeal is allowed, the Judgment and Decree dated 2nd December, 2014 passed by the Learned Adhoc District Judge-4 , Pune in Civil appeal No. 287 of 2011 is set aside and the Judgment and Decree dated 3rd December, 2010 passed by the Civil Judge, Senior Division, Pune in Regular Civil Suit No. 108 of 2003 dismissing the Suit is confirmed.

(S.J. KATHAWALLA, J.)

3 2014 (2) Mh. L.J. 210

4 2009 (3) Mh. L.C. iii

5 AIR 1964 SC 1348