

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 937 OF 2004

GANESH DAJI KHEDEKAR

Indian Inhabitant of Mumbai

Residing at G-6, Ganesh Chawl, Durga Nagar,
Akurli Road, Kandivali (East), Mumbai-400 101

...Appellant

~ VERSUS ~

1 RAMESH DAJI KHEDEKAR

Indian Inhabitant of Mumbai, residing at G-6,
Ganesh Chawl, Durga Nagar, Akurli Road,
Kandivali (East), Mumbai-400 101

2 THE SECRETARY,

Ganesh Kripa Rahivasi Seva Sangh, Durga
Nagar, Ganesh Galli, Akurli Road, Kandivali
(East), Mumbai-400 105

...Respondents

APPEARANCES

FOR THE APPELLANT

Mr SA Sawant, *Advocate.*

FOR THE 1ST RESPONDENT

Mr V Kapse, *Advocate, i/b SG Walam*

CORAM: G.S. PATEL, J

DATED: 13th July 2017

ORAL JUDGMENT:

1. In an all too familiar story in this city, two brothers are at war over a room in a chawl, one that is likely to be declared as a slum. This is Room No.6 at Ganesh Chawl, Durga Nagar, Ganesh Kripa Rahivasi Seva Sangh, Akurli Road, Kandiwali (E), Mumbai 400 101. In appeal before me today is the original Plaintiff, Ganesh Khedekar (“**Ganesh**”), the younger brother. His suit was dismissed. The 1st Defendant is the 1st Respondent to the Appeal, Ramesh Khedekar, the older sibling. The 2nd Respondent, with which we are largely unconcerned, is the society or Seva Sangh.

2. Ganesh brought suit in 1999 for these reliefs:

“a) That is be declared that the transfer deed dated 14th July, 1996 and an affidavit dated 20th July, 1996 by which the 1st Defendant has relinquished the right, title and interest in respect of the room No.6 admeasuring at about 10' X 15' ft. situated at Ganesh Chawl, Durganagar, Ganesh Kripa Rahivashi Seva Sangh, Akurli Road, Kandivali (East), Mumbai-400 101, in favour of the Plaintiff, are valid, subsisting and binding on the 1st Defendant.

b) That it be declared that the Plaintiff is an absolute owner of the said premises admeasuring 10' X 15' ft. situated at the address mentioned in the cause title of the plaint.

c) The Defendant No.1 be directed and ordered to return the said original transfer deed dated 14th July 1996 (Exhibit A hereto) back to the Plaintiff if it is with him or otherwise after recovering the same from the said Ramesh Wadwalkar.

d) That the 1st Defendant along with his wife and children be mandatorily directed and ordered to vacate the

suit premises i.e. Room No.6, admeasuring 10' X 15' ft. situated at Ganesh Chawl, Durganagar, Ganesh Kripa Rahivashi Seva Sagh, Akurli Road, Kandivali (East), Mumbai-400 101.

e) That the 2nd Defendant be ordered and directed to transfer the said premises since the name of Plaintiff in their records and treat the Plaintiff as a member of Ganesh Kripa Rahivashi Seva Sagh, instead of his elder brother the Defendant No.1."

3. The basis of this claim was that, according to Ganesh, there was at some point a mutual understanding between him and Ramesh. In paragraph 3 this is what Ganesh says and this is the basis of the Plaint:

"3) Pursuant to the said writing and affidavit this Defendant become absolute owner of the said premises. This Defendant say that the concerned authorities issued the election Identity Card, Ration card and Electricity Bills in favour of this Defendant showing his name and address in respect of the said Room. Hereto annexed and marked Exhibits 3, 4 and 5 are copies of the said documents."

4. From this, it is clear that the document of 14th July 1996 is said to be the document of transfer of title of the room. It is said to have been executed for valuable consideration, and witnessed. I will turn to this document later. It is referred throughout as Exhibit 'A', and I will use the same reference in this judgment.

5. Then Ganesh said in his plaint that by a notarised affidavit dated 20th July 1996, Ramesh confirmed this transfer to Ganesh. Ganesh says the affidavit Ramesh signed is a relinquishment of a

chawl premises by Ramesh in Ganesh's favour. Thereafter, Ganesh got the electricity meter and ration card transferred to his name.

6. Ganesh then said that on 13th June 1998 he demanded the transfer be noted by the 2nd Defendant Seva Sangh. The 2nd Defendant did not act on this. Legal correspondence followed. There are allegations in the plaint about nuisance and quarrels but we are not concerned with these. The Suit was filed in July 1999.

7. Ramesh entered a written statement. In paragraph 2 he said he purchased these premises from one Arun Mahadeo Chavan in December 1993 for Rs.33,000/-. He produced these documents. He said Ganesh was indeed residing there with Ramesh; but this is where the rival narratives diverge, and they diverge completely. For, Ramesh says Ganesh wanted to get a bank loan to purchase a new house, hoping to marry and settle down, and quite naturally turned to his elder brother for help. Ganesh asked Ramesh to give him a writing he could show the bank to obtain a loan. In paragraph 4 of the written statement, Ramesh says the document at Exhibit 'A' to the plaint of 14th July 1996 was preceded by a document of 16th June 1996, and this clearly sets out that Ganesh was in search of a loan for which he needed this documentation. The earlier document says that once the loan was obtained, the two brothers would decide where each would go. The earlier writing confirmed, Ramesh said, that the ownership of the room would remain with him. He annexed the copy of the 16th June 1996 document. There is no mention of this document in the plaint.

8. The writing of 16th June 1996 was signed by three witnesses: Suresh Dattaram Khedekar, a common relative; one Ganesh Sitaram More; and one Balkrishna Ganpat Chavan. These three witnesses, according to Ramesh, confirmed his version of events. Ramesh also said that the signatures of Ganesh More and Balkrishna Chavan on Exhibit 'A' to the Complaint were forged; neither of them had signed it. Then Ramesh went on to say that Ganesh did in fact obtain a loan from Shri Datta Trimurti Sahakari Patpedhi Ltd, Mumbai and used these funds to buy or acquire a room in a chawl at Appa Pada, Malad (East) from one Ganesh Tirlotkar. There then followed a comprehensive traverse of the Complaint.

9. On these pleadings, the learned Judge of the City Civil Court framed four issues and answered them thus:

Sr No	Issues	Findings
1)	Does the Defendant No.1 prove that document at Exhibit A to the complaint was executed by him only with a view to allow Plaintiff to raise loan and that he never intended to transfer the suit premises in favour of the Plaintiff?	In the affirmative.
2)	Does the Plaintiff prove that he is the owner of the suit premises by virtue of document at Exhibit A and B to the Complaint?	In the negative.
3)	Does the Plaintiff prove that he had permitted Defendant No.1 to reside in the suit premises after the execution of	In the negative.

Sr No	Issues	Findings
	document at Exh.A and has thereafter asked Defendant No.1 to remove himself from the suit premises thereby seeking eviction of Defendant No.1 from the suit premises?	
4)	Is the Plaintiff entitled the reliefs asked in the suit?	As per the final order.
5)	What decree?	As per final order.

10. Ganesh led his own evidence. There was no other witness on his behalf. Ramesh not only volunteered his own evidence, but each of the three witnesses I have mentioned above also came forward to give evidence in his favour.

11. It is not necessary to look beyond the three or four documents that are immediately relevant and some of these are helpfully compiled by Mr Sawant for the Plaintiff in a separate compilation. The first of these is the document of 16th June 1996. This was initially marked 'Y' for identification. It was subsequently marked Exhibit '5' in evidence. A copy is in the R&P which has been received, and is also at page 43 of the compilation. The document is in Marathi. It has the signatures, in sequence, of the Plaintiff Ganesh, then Suresh Dattaram Khedekar, Ganesh Sitaram More and Balkrishna Ganpat Chavan. The three witnesses have each put the date below the signature. The document is ostensibly written in the first person by Ganesh, and in this Ganesh says that since he is

in need of a loan he has approached Ramesh for permission to show the room in question in Ganesh's name, so that with a loan Ganesh could get another room; a decision would then follow about who would shift where.

12. The next document is the one annexed to the Plaint as Exhibit 'A'. It is on Rs.10/- stamp paper. It is also handwritten and it is supposedly by Ramesh, saying that he is making over the 10' x 15' sq. ft. room to his brother Ganesh; and that he has executed this writing of his own volition without being influenced or impaired.

13. The third document to which I must make reference now is the so-called affidavit that was marked in evidence. A copy of this affidavit is at page 97 of the compilation. It is typed in English, also on Rs.10/- stamp paper. Ramesh is supposed to have signed it. His signature appears in the Devnagari script. In this, Ramesh supposedly said that since he was in a bad financial condition, he was handing over vacant possession of the room to his brother on receipt of the cost of construction.

14. Now as to the oral evidence. I believe it is best to start with the evidence of the three witnesses, as that will give us the most accurate picture. DW-2 was Ganesh More one of the witnesses in regard to Exhibit 5, the document of 16th June 1996. He accepted that he signed it. He said Ganesh signed it too. He entirely denied having signed Exhibit 'A' to the plaint, the document of 14th July 1996 on which the entirety of the Plaintiff's case was based. Ganesh More was cross-examined. He said the 16th June 1996 document was written out by the Plaintiff in his presence. It was signed at

about 6 or 6.30 p.m. that evening. He confirmed the presence of the other two witnesses. More was the maternal uncle of the two brothers. He denied the suggestion that this document was forged. He denied the knowledge of the 14th July 1996 document, Exhibit 'A'. He confirmed that the Plaintiff and the Defendant were present when the earlier document of 16th June 1996 was executed.

15. DW-3 was Balkrishna Ganpat Chavan. He too accepted his signature on the 1st Defendant's document Exhibit '5'. He then went on to say that Ganesh told him that he wanted to purchase a house and needed to borrow money for that purpose, and the room was to be transferred in his name for that reason. He agreed that the document at Exhibit '5' of 16th June 1996 was written by Ganesh in his presence. He also denied his signature on Exhibit 'A', the document of 14th July 1996. In cross-examination he broadly confirmed the time of execution of the 16th June 1996 document. He agreed that there were other witnesses present when Exhibit '5' was signed. He denied the suggestion that it was fabricated. He did not accept his signature on Exhibit 'A'. He re-confirmed in cross-examination, and this is important, the reason for the execution of the 16th June 1996 document. He said that he had ascertained from Ramesh why the document was being executed and he was told that Ramesh wanted to borrow money to get a room of his own.

16. The last of the three witnesses was DW-4 Suresh Khedekar and his evidence is clearly more important than either of the others. He accepts his signature on Exhibit '5', the earlier document of 16th June 1996. He says it was signed at the premises in question. He again confirms the purpose, which was to enable Ganesh to get a

loan. However, unlike the other two witnesses, he agrees that he did sign Exhibit 'A' the document on which the Plaintiff relies. He said that document of 14th July 1996 was one that he himself scribed. At that time neither the Plaintiff nor the Defendant had signed the document. He said the document was again to facilitate a loan. In cross-examination, he agreed that Exhibit '5' the document of 16th June 1996, was signed by both Plaintiff and the 1st Defendant in presence of these three witnesses. Suggestions of fabrication were denied. He also confirmed with the Plaintiff as to the reason for the execution of the document. He disagreed with the suggestion that the Ramesh's document at Exhibit '5' was forged.

17. In his plaint and in his evidence Ganesh claimed to have paid Rs.40,000/- and other amounts to the 1st Defendant Ramesh. He was of course unable to prove any of this.

18. Clearly, Mr Sawant's biggest obstacle is the document Exhibit '5' of 16th June 1996. He attempts valiantly to overcome this insuperable difficulty by urging me to hold, in the absence of all evidence and material on record, that Exhibit '5' is a self-evident forgery because Ganesh's signature on this document does not match his signature on the plaint or in the other admitted document. I am unable to do anything of the kind. There is no evidence of any such forgery. This is a matter that requires proof. This is a civil action in a Civil Court. There is no question of a *prima facie* view as one might be persuaded to take in a Writ Petition or in an interim proceeding. Either the forgery is proved or it is not. The Plaintiff ought to have used whatever means were available to

him in law, including the evidence of an expert, to prove that his signature was false.

19. It does not rest at that. It is also not a question of merely the Plaintiff's word against that of the 1st Defendant. It is a question of the Plaintiff's word against that of *four* persons, viz., the 1st Defendant and three witnesses, each of whom confirmed that the Plaintiff did sign Exhibit '5' between 6 to 6.30 p.m. on 16th June 1996 in the premises in question. Each of them confirms having signed the document as a witness, and each of them confirms that the Plaintiff and the Defendant were both present at the time, and both signed in their presence. There is no question therefore of holding that this document has a forged signature.

20. What of Exhibit A? This is, after all, the bedrock and fulcrum of the Plaintiff's case. Take this away and everything falls. This, according to Mr Sawant, is a sufficient document to transfer title. It matters not that it is on Rs.10/- stamp paper in respect of property that is undoubtedly of considerably more value, and that, though it purports to relinquish and transfer title in an immovable property, is admittedly unregistered. That is not the only problem. There are many signatures on this document: the Plaintiff, 1st Defendant, Suresh Khedekar, Ganesh More, Balkrishna Chavan and two others Pandurang Khedekar and Ramesh Mahadeo Wadwalkar. Of Pandurang Khedekar and Ramesh Wadwalkar, we know next to nothing in these records. But the names of Ganesh More, Balkrishna Chavan and Suresh Khedekar are common to the two documents. Unfortunately for the Plaintiff, only Suresh Khedekar accepts that he signed both documents. Ganesh More and

Balkrishna Chanvan flatly deny having signed Exhibit 'A' the document of 14th July 1996.

21. What is interesting in the record, and especially in the cross-examination is not what it contains but rather what it does not contain. This is indeed most pertinent because I find that Suresh Khedekar was not asked whether Ganesh More and Balkrishna Chavan the other two witnesses had or had not signed Exhibit 'A', the document on which the Plaintiff relies. This is a glaring omission in the cross-examination and there is no explanation at all, except this: that what those other two witnesses say was entirely true; the Plaintiff knew it to be true; the Plaintiff knew that Suresh Khedekar knew this to be true; and, therefore, a question put to Suresh Khedekar about the other two witnesses would reveal that they had not in fact signed Exhibit 'A'. This can be the only reason the question was not asked. There is no other explanation and it is entirely reasonable to draw this conclusion against the Plaintiff.

22. There remains the last of the documents, the affidavit of 20th July 1996. Of this, frankly, the less said the better. The consistent answer from the Defendant is that this too was to enable the transfer of the meter, and this was only to facilitate Ganesh in getting a loan.

23. In view of all this material, in my judgment, the Trial Court correctly answered the issues for the correct reasons. It correctly appreciated that the 16th June 1996 document completely gave the live to the Plaintiff's case. It also correctly concluded that the Plaintiff's so-called document of transfer Exhibit 'A' of 14th July 1996 did not withstand scrutiny and, in any case, could not in law

operate as a document of transfer of title. At best it was a gift. Even that, as the Trial Court said, required registration. There was no proof of payment of consideration. The Court also concluded that of the common witnesses to the two documents, all supported the case of the Defendant, and none supported the case of the Plaintiff. I have on the evidence come to exactly the same conclusion for precisely the same reason.

24. The impugned order calls for no interference in any aspect.

25. The Appeal is dismissed. In the facts and circumstances of the case there will be no order as to costs.

(G. S. PATEL, J.)