

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 15481 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 15482 OF 2017

Suresh Sukhdev Pardeshi & Anr	...Appellants
<i>Versus</i>	
Govind B Bhagat & Anr	...Respondent

Mr KP Tiwari, *i/b M/s. KP tiwari & Co, for the Appellants.*
Mr Farhan Dubash, *a/w Mr Anosh Sequeria, Mr RA Mishra, Mr Jayraj Shinde, i/b VB Dhingreja, for Respondent No.1.*

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

1. The appeal challenges an order dated 27th February 2017.

2. The Plaintiff filed a Motion seeking that the agency of Defendants Nos. 1 and 2 with the Court Receiver be cancelled peremptorily; that physical possession be taken back from them of the flat at 2nd floor, Stella Villa, 40 AC Shirley Rajan Road, Bandra (West) Mumbai 400 050; and that the Plaintiff be put into possession as Receiver's agent without royalty or compensation.

3. The sole ground for this was that the 1st and 2nd Defendants allegedly inducted on Abhidsingh as an occupant of this flat and thereby allegedly parted with possession. This is said to be a breach of the agency agreement, sufficient to justify its cancellation, the ejectment of Defendants Nos. 1 and 2, and putting the Plaintiff into possession.

4. There is actually no material on record that the 1st and 2nd Defendant parted with possession or created any third party rights in favour of Abhidsingh. They claimed he was their guest in the flat temporarily accommodated for two to three days while another flat was being renovated. While staying in the suit flat, Abhidsingh committed suicide.

5. It is difficult to accept the reasoning in paragraph 5 of the impugned order, where, merely on the basis that Abhidsingh was unrelated to the Defendants, the Learned Judge held that there is a gross violation of the order of appointment of the Court Receiver and of the agency agreement, and that it was just and proper to take physical possession of the said flat from the Defendants. It is even more difficult to understand how this could entitle the Plaintiff and to be put into possession as an agent of the Receiver.

6. Immediately thereafter, the most unusual event seems to have been transpired in that Court. Mr Tiwari for the Defendants said that the suit should proceed. At this, the Plaintiff promptly stepped into the witness box. His only submission or testimony was that he had no objection to taking possession of the flat.. On this basis, the

Motion was decided in favour of the Plaintiff. The two Defendants were ejected and an order was made to put the Plaintiff into possession.

7. The question of the Plaintiff 'giving evidence' and the 'suit proceeding to trial' in this fashion was most unusual. This entire procedure was unnecessary and is itself highly irregular at the Motion stage. Next, there is no document on record produced by the Plaintiff to establish any case of violation of the terms of the agency. The Plaintiff seems to have relied on a statement made by the Defendants to the police, one that is not as unambiguous as Mr Dubash would have it, and on the basis of certain dates, attempted to persuade the Court to conclude through some process of complex deduction that the deceased Abhidaysingh must have been a licensee of the flat in question, because according to the Plaintiff he had considerable overstayed his welcome. Nothing existed to show any third party rights having been created in favour of Abhidaysingh. None have claimed by his heirs. This is hardly the kind of situation that would justify the termination of agency.

8. The impugned order is set aside. Defendants Nos. 1 and 2 have continued in possession on the basis of an interim order that continued since then. They confirm they are agents of the Receiver, and will continue as such.

9. The Notice of Motion is dismissed. There will be no order as to costs.

10. A grievance is made that the Plaintiff is deliberately delaying the trial of the Suit. All that remains is the cross-examination of the 1st Defendant. I am told that the Suit is already scheduled on 29th June 2017. On that date, the Plaintiff will complete the cross-examination of the 1st Defendant. The Trial Court will not adjourn the matter for further cross-examination on that date, though the final hearing may be scheduled at some date convenient to the Trial Court.

11. The Appeal from Order and the Civil Application are disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J.)