

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 969 OF 2001

Govind Gopal Chavan

...Appellant

Versus

Jagannath Bhikaji Shivdavkar & Ors.

...Respondents

.....

Mr.Shreepad Murthy a/w. Mr.Abhishek Patil and Ms. Rima Oka for the Appellant.

Ms. Sayli Apte i/b. Mr.P.G.Lad for Respondent No.2/MHADA.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: SEPTEMBER 25, 2017

P.C. :

1. None present for respondent no.2 when the matter was called out on two consecutive dates.

2. This Appeal from Order is directed against the order dated 18.09.2001 passed by the learned Judge, City Civil Court at Bombay, in S.C.Suit No. 2364 of 1991.

3. The appellant/plaintiff has filed a Suit for declaration in respect of transfer of the suit premises by defendant no.2/respondent no.2, i.e. the Bombay Housing Area Development Board from the plaintiff to defendant no.1/respondent no.1 is collusive. This declaration had sought against respondent no.1/defendant no.1. This Appeal from Order is very old and it is already admitted. It was placed on board twice; however, nobody was appeared on behalf of the respondents/defendants.

4. The appellant/plaintiff is a tenant of the Housing Board and occupying the suit premises bearing room no. 4297 in Building No. 129 of Nehru Nagar, Kurla (E) and respondent no.1/defendant no.1 was permitted to occupy the suit premises as a paying guest. Thereafter, respondent no.1 was continuously residing in the suit premises and, therefore, the plaintiff was not occupying the suit premises for some period. Respondent no.1/defendant no.1 approached the Housing Board and got the suit premises transferred in his name illegally and, therefore, the appellant/plaintiff has filed the Suit. When the appellant/plaintiff asked respondent no.1/defendant no.1 to vacate the suit premises, he filed Suit No. 754 of 1987 for declaration that he is owner of the suit premises and for injunction against the

appellant/plaintiff from entering the suit premises. The said Suit was dismissed with costs by judgment and order dated 29.11.1988 passed by the learned Judge, City Civil Court at Bombay. Thereafter, respondent no.1 had filed First Appeal No. 1501 of 1988 against the appellant. The said Appeal was also dismissed with costs by order dated 09.04.1991 and the trial Court has held that the defendant was entitled to enter the suit premises and occupy alongwith the plaintiff. Being aggrieved by the order dated 09.04.1991 in First Appeal No. 1501 of 1988, respondent no.1 had filed Letters Patent Appeal No. 65 of 1991 before Division Bench of this Court. The said LPA was summarily dismissed by order dated 09.08.1991. The Division Bench of this Court has declared that the appellant-plaintiff was not in exclusive possession of the suit premises and he was residing there as a paying guest and also directed the Housing Board to follow the proper procedure before cancelling the rights of the respondent-defendant as owner/allottee of the suit premises and also held that the transfer of the suit premises by Housing Board in the name of defendant no.1/respondent no. 1 is illegal. All proceedings filed by respondent no.1/defendant no.1 for occupying the suit premises were rejected and it was specifically declared that the transfer of the suit premises by Housing Board in favour of respondent no.1/ defendant no.1 was illegal. Though the said order was passed

against respondent no.1/defendant no.1, the present appellant wanted the same declaration in his favour by way of mandatory injunction. Therefore, he was required to file a separate Suit for interim relief. The learned Judge of the City Civil Court at Bombay has held that the present Suit is between the licensor and licensee and hence, the City Civil Court has no jurisdiction to try and decide the suit. Therefore, the learned Judge, City Civil Court at Bombay by impugned order dated 18.09.2001 returned the plaint for proper presentation. Hence, this appeal.

5. Learned counsel for the appellant has submitted that during pendency of the appeal i.e. from 2001 to till date, respondent no.1/defendant no.1 has left the suit premises. He has further submitted that during the pendency of the appeal, a Notice of Motion No. 5967 of 1911 was taken out by the appellant/plaintiff for seeking mandatory relief for removal of defendant no.1 from the suit premises. The said interim relief was granted by the learned Judge, City Civil Court, Bombay vide order dated 21.02.1992. Pursuant to the stay order, respondent no.1/defendant no.1 vacated the suit premises with his family in the year 1992 itself. However, as the suit was pending for the purpose of declaration and the trial Court has held that it does not have jurisdiction

to try and entertain the suit, this appeal is filed. He has argued that as on today, respondent no.1/defendant no.1 is not staying in the suit premises. He has further submitted that the Division Bench of this Court in LAP No. 65 of 1991 has given a specific finding that the transfer of the suit premises by Housing Board in the name of defendant no.1/respondent no. 1 is illegal, this Court may grant same relief in this appeal as it is continuation of the Suit.

6. Perused all relevant orders, plaint and prayers. The submissions made by the learned counsel for the appellant are found correct. In the Suit, the appellant/plaintiff has not asked relief only against respondent no.1/defendant no.1, who was staying there as a licensee or paying guest, but the act of the Housing Board of transferring the suit premises in the name of respondent no.1/defendant no.1 is to be declared illegal, so it is to be transferred in the name of the appellant/plaintiff. Thus the plaintiff has sought the relief also against the Housing Board to whom Bombay Rent Control Act is not applicable. Thus, Suit is required to be triable by the City Civil Court or not by the Small Causes Court and hence, the order dated 18.09.2001 passed by the learned Judge, City Civil Court at Bombay needs to be set aside. In view of declaration in LPA No. 65 of 1991, sending back the Suit before the City Civil Court

will be futile exercised and, therefore, the order can be passed in the appeal itself and the litigation can be put to an end.

7. In view of the above, the order dated 18.09.2001 passed by the learned Judge, City Civil Court at Bombay is hereby set aside.

8. The Housing Board is directed to cancel the order of transfer of the suit premises in favour of respondent no.1/defendant no.1 and it is to be restored to its original possession, in favour of the appellant/plaintiff.

(MRIDULA BHATKAR, J.)