

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST) NO. 30510 OF 2017

Laxmi Thaniyappa Banjan & Ors	...Applicants
<i>Versus</i>	
Pushpavathi Krishnappa Bangera	...Respondent

Mr YV Sanglikar, *i/b Nilima V Sanglikar, for the Applicants.*

CORAM: G.S. PATEL, J
DATED: 9th November 2017

PC:-

1. Heard.

2. The Civil Revision Applicant takes exception to an order or judgment dated 10th October 2017. The present Petitioners were the Appellants before the Appellate Bench at the Small Causes Court, Mumbai. They were Defendants to the Suit. The present Respondent Pushpavathi is the Plaintiff.

3. Pushpavathi and the 1st Petitioner Laxmi are related. Laxmi is Pushpavathi's sister-in-law, her late husband's, Krishnappa's, sister. Pushpavathi's case was that Krishnappa purchased flat no.401, Jeevan Sahar Co-operative Housing Society Ltd, Plot No.94, Deval Wadi, old

Chakala Sahar Road, Andheri (E), Mumbai 400 099. This has a carpet area of about 340 sq. ft. According to Pushpavathi her mother-in-law (Laxmi's mother) was living in the suit premises. Laxmi was a gratuitous licensee of the Plaintiff Pushpavathi and Krishnappa. The plaintiff alleges that there was some agreement or understanding that after the mother died, Laxmi would vacate the premises. This was because Pushpavathi's mother-in-law / Laxmi's mother did not want to reside anywhere else. Pushpavathi's mother-in-law died on 30th May 2008 and the Defendants were required to deliver possession within a month of that date. They did not and Pushpavathi issued notice to vacate on 13th August 2008. The Defendants replied on 23rd September 2008 and in this reply took conflicting stands. They did not vacate the premises. Pushpavathi's lawyer responded on 17th August 2008. Pushpavathi also said that she became a member of the Jeevan Sahar Co-operative Housing Society Ltd and that her name was shown on the records of the society. She insisted that Laxmi was a gratuitous licensee now living in suit flat with her son and daughter-in-law.

4. The Defendants filed a written statement and denied the Plaintiff's case. They even denied that Pushpavathi was the owner or that the 1st Defendant Laxmi was a gratuitous licensee. I find that in the plaint in paragraph 8 Laxmi claimed that she came into possession and occupation of the suit premises "in her own rights" and she then said that she took possession of the suit premises — this is important — as "joint owner or in the alternative as the lawful tenant thereof". Now it is argued that this statement should be read to mean that Laxmi claims to have been the tenant *of the society*. That is neither pleaded nor proved. There were therefore three different possible scenarios that arose in the Courts below. The first was whether Laxmi was an

absolute owner or a joint or co-owner of the suit flat. The second was whether she was, in default of proving the first, a tenant of the suit flat. Third, if neither of the first two cases succeeded, if Laxmi could be said to be a gratuitous licensee. I am unable to see any fourth possibility that could fairly be said to arise in a situation such as this.

5. Laxmi's case was that her husband, who was working overseas in the Middle East, contributed two-thirds of the purchase price of the premises. He did not pay this directly but remitted this to Krishnappa who made payment. There is a case that a loan was repaid directly and that this is shown in the monthly outgoing bills. What is not in dispute, however, is that Krishnappa obtained a share certificate in respect of the premises in his name and the written statement suggests that this was by mutual agreement; yet it is alleged that Laxmi's husband and Pushpavathi, or Laxmi's husband together with Pushpavathi and Krishnappa, were joint owners. Laxmi thus claimed co-ownership of the premises. She therefore maintained that there was no relationship of landlord and tenant or even licensor and licensee of any description and the suit was not maintainable for eviction on that ground. She also contended that she was the lawful tenant and was paying society charges. In any view of the matter she could not be said ever to have been a gratuitous licensee. This point is repeatedly stressed by Mr Sanglikar in the Civil Revision Application before me today.

6. After framing issues the Trial Court partly decreed the suit. Laxmi and her children appealed.

7. Before the Appellate Court the initial discussion was on the question of the ownership. Laxmi attempted to show through

documents evidencing payment of society charges that she had acquired ownership rights. What this seems to overlook is that the society receipts that were issued till 1998 were in the name of Pushpavathi's husband Krishnappa and therefore his title to and ownership of the premises cannot be disputed. Neither Laxmi nor her husband ever brought suit to assert their title or, as owners, to demand a partition. The Appeal Court found that the Defendant took stands that were mutually contradictory and self-destructive. It held that she was either a co-owner or a tenant or gratuitous licensee but could not be in occupation in any fourth capacity. As a matter of evidence, the Court did not find a document of title in favour of the Defendant Laxmi. Before the Court there was evidence of payment of society charges from 1980 to 1992. One item in these appeals showed repayment of a loan at the rate of Rs.148/- per month. This itself in my view is insufficient to show that it was the loan for acquisition or repay in this fashion. Certainly no positive argument is required in that regard. According to Mr Sanglikar if the Defendant was repaying a loan on behalf of the Plaintiff this is sufficient consideration and Defendant could not be said to be a gratuitous licensee. The argument, in my view, overlooks a fundamental issue. It proceeds on the footing that there was in fact an understanding between the Plaintiff and the 1st Defendant but this is something that the 1st Defendant has denied at the forefront of her written statement. This is yet another contradiction in the stand of the 1st Defendant.

8. As to the question of jurisdiction of the Small Causes Court, following the decision of the full Bench of this Court in *Prabhudas Damodar Kothecha & Anr v Manharbala Jeram Damodar & Ors*¹ upheld

1 2007 (4) ALL MR 651.

by the Supreme Court,² this is really not *res integra* any longer and that Court clearly has jurisdiction.

9. The next argument was that the dispute raised was one of title and the Small Causes Court clearly has no jurisdiction to declare title to immovable property. While that may be true, the argument proceeds on the footing that the Defendant is accepted as an owner and there is a dispute as to title. There is no such dispute and the plaint proceeded on the footing that not being an owner and not being a tenant, and not showing any consideration, the Defendant was a gratuitous licensee.

10. The Appeal Court framed points for determination and then proceeded to consider these cautiously and carefully. In paragraph 18 it noted the defence that Laxmi was the actual owner of the property. It found there to be no evidence of this with society receipts still being in Krishnappa's name without any objection from either Laxmi or her husband. At no point did Laxmi or her husband ask that the flat be registered in their name. She did not ask for receipts in her name or her husband's name. If there was a dispute as to title, this was being raised by Laxmi and it was she who would ought to have filed a suit in a Court of competent jurisdiction, not Pushpavathi who did not accept that Laxmi had any title at all. This is precisely what the Appellate Court concluded and in my view quite correctly in paragraph 18.

11. The Court then went on to consider the conflicting pleas taken by the Defendant. As to the question of being a licensee or a gratuitous licensee, the Appellate Court found on a consideration of the evidence

2 *Prabhudas Damodar Kotecha v Manhabala Jeram Damodar*, (2013) 15 SCC 358.

that Pushpavathi's case was not dislodged in cross-examination. There was no evidence of payment of rent. To claim tenancy on the basis that society outgoings were paid by Laxmi was insufficient and I think that in this finding the Appeal Court can hardly be faulted. As the Appeal Court said a gratuitous licensee is one of a species of licensee. That alone will not suffice to provide the Defendant with an adequate case in a situation such as this. At the end of the day, the material before the Court was that all the documentation from the society certificates to the society bills and receipts stood in the name of the Plaintiff or her husband. There were some payments of society charges said to have been made by the Defendant Laxmi but barring this she had not a thing to show by way of a evidence in support of her claim either of ownership or tenancy.

12. Above all there is the consideration that what I have before me is a Civil Revision Application within the frame of Section 115 of the Code of Civil Procedure, 1908. This does not permit me to treat the application as a first appeal and to completely re-appreciate the evidence. It does not allow me to substitute my view, should I be inclined to take one different from the Appeal Court, from that of the Appeal Court, if the view of the Court below is plausible and suffers from no jurisdictional error, material irregularity or perversity. From any perspective it is difficult to say that the impugned order is one that demands interference. In my view it does not.

13. The Revision Application is dismissed. There will be no order as to costs.

14. Having regard to the relations between the parties, and since the parties are related, and also because the Defendant had been residing in the premises, I will grant some allowance and indulgence to the Defendants for a period of six months to vacate. Order accordingly.

(G. S. PATEL, J.)