

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.561 OF 2017

Prasad Sajeed Shetty @ Hegde ... Applicant
Vs.
Modern Education Society through Secretary
M. M. Kandar and others ... Respondents

Mr. Satyajeet A. Rajeshirke for Applicant.

CORAM : R. G. KETKAR, J.
DATE : JUNE 5, 2018

P.C. :

Heard Mr. Rajeshirke, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant has challenged the judgment and decree dated 04.09.2009 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.311 of 2006 as also the judgment and decree dated 21.09.2016 passed by the learned District Judge-15, Pune in Civil Appeal No.557 of 2009. By these orders, the Courts below have dismissed the Suit instituted by the applicant, hereinafter referred to as 'plaintiff', for declaration of tenancy rights in respect of property i.e. mess and canteen premises consisting of kitchen admeasuring about 21.6 x 18.6 ft., scullery admeasuring about 10.6 x 11.6 ft., store admeasuring about 13.9 x 10.3 ft., toilet situate towards Northern side and open space towards Southern side and thereafter a toilet block, privy, store admeasuring about 13.9 x 10.3 ft. (for short 'suit premises') and for perpetual injunction restraining the respondents, hereinafter referred to as 'defendants', from dispossessing the plaintiff without following due process of law.

3. Having regard to Section 7 of the C.P.C., provisions of Section

115 are not applicable to the proceedings arising from the Court constituted under the Provincial Small Cause Courts Act, 1887. In view thereof, leave to convert C.R.A. into Writ Petition is granted. Amendment shall be carried out within one week from today.

4. In support of this Petition, Mr. Rajeshirke strenuously contended that plaintiff is occupying the suit premises since the year 1999. Tender was invited in the year 2005 and he was awarded tender for running mess and canteen services in the suit premises. He submitted that merely because plaintiff participated in the tender process and was awarded contract for running a mess and canteen in the suit premises, that itself will not extinguish his tenancy rights, which were created in the year 1999. He invited my attention to paragraph 18 of the District Court judgment which considered the statement of calculation (exhibits 56, 57 and 58) wherein some amount of money was deducted on account of rent. He submitted that this itself establishes plaintiff's tenancy rights and, therefore, the Courts below were not justified in holding that plaintiff has not established his tenancy rights. In any case, he submitted that by letter dated 13.07.2006 at exhibit-58, defendants have terminated plaintiff's contract with effect from 20.07.2006. Plaintiff apprehends that after terminating this contract, he will be dispossessed without following due process of law. At least to this extent, the Courts below should have issued injunction restraining the defendants from dispossessing the plaintiff without following due process of law.

5. I have considered the submissions advanced by Mr. Rajeshirke. I have also perused the material on record. As noted earlier, plaintiff has claimed declaration of his tenancy rights and also perpetual injunction restraining the defendants from dispossessing him from the suit premises without following due process of law. In so far as tenancy rights of the plaintiff are concerned, the learned trial Judge has

considered this aspect from paragraphs 9 to 13. The learned trial Judge, after considering the material on record, and in particular exhibits-54 and 83, observed that defendants used to hire only canteen services from others like plaintiff by calling public tenders. In paragraph 13, the learned trial Judge has referred to exhibit-102 which is the list of rates of different eatable items. The learned trial Judge also considered exhibit-59, which is a notice dated 20.05.2004, circular at exhibit-109 in respect of meeting held on 16.10.2002, notice of meeting held on 30.06.2004 at exhibit-110 and observed that these documents are sufficient to prove that the canteen is being run under the supervision and control of the Managing Committee only and it is not handed over to the plaintiff exclusively. Only canteen services of plaintiff were hired by the defendant. The learned trial Judge also considered receipts at exhibits 62 to 77, which show that the amount so received was against the licence fees. The learned trial Judge, therefore, concluded that defendants have hired canteen services of the plaintiff and plaintiff is not the tenant of the defendants.

6. As far as the District Court is concerned, this aspect is considered in paragraphs 14 to 19. The learned District Judge referred to tender document as also receipts produced at exhibits-62 to 77 to conclude that plaintiff is not tenant of the defendants in respect of the suit premises and the canteen services of the plaintiff were hired by the defendants. Thus, the Courts below, after appreciating the evidence on record, have concurrently held that plaintiff has failed to establish his status as a tenant. I do not find that the Courts below have committed any error in that regard.

7. Mr. Rajeshirke submitted that the plaintiff apprehends that he will be dispossessed without following due process of law. The Courts below have considered this aspect as well. In paragraph 17, the learned trial

Judge held that by letter dated 13.07.2006, defendants have terminated the contract awarded to the plaintiff and thus, defendants have followed due process of law. Apart from that, defendants had also issued letter at exhibit-58 informing the plaintiff about their intention to terminate the services. As far as the District Court is concerned, this aspect is considered in paragraphs 22 and 23. The learned District Judge also held that by issuing letter dated 13.07.2006, defendants have followed due process of law. In the light of the aforesaid discussion, I do not find that the Courts below committed any error in rejecting the prayer for perpetual injunction. The plaintiff was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The plaintiff was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

8. List the matter for 'reporting compliance' on 12.06.2018.

(R. G. KETKAR, J.)

Minal Parab