

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.549 OF 2017

Ramnath Gokulprasad Varma ... Applicant
Vs.
Shree Dattaguru Co-operative Hsg. Soc. Ltd. ... Respondent

Mr. Sachin P. Shetye for Applicant.
Mr. Prabhakar K. Shetty for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 07, 2018

P.C. :

Heard Mr. Shetye, learned Counsel for the applicant and Mr. Shetty, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as 'defendant', has challenged the judgment and order dated 31.10.2012 passed by the learned Judge of the Court of Small Causes at Bombay in L.E.Suit No.249/281 of 2007 as also the judgment and order dated 21.06.2017 passed by the Appellate Bench of the Small Causes Court at Bombay in Appeal No.10 of 2013. By these orders, both the Courts decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', and directed the defendant to handover vacant possession of the land admeasuring 180 sq.ft. situate in Central Garden of Shree Dattaguru Co-operative Housing Society Limited, CTS No.18, Deonar Village Road, Mumbai 400 088 by removing the temporary shed within two months from the date of the order.

3. In support of this Application, Mr. Shetye strenuously contended that the Courts below committed serious error in decreeing the Suit. He

submitted that from the material on record, it would be evident that the defendant had constructed shed in the year 1970 with the permission of the plaintiff. As the defendant has executed a work of permanent character and incurred expenses in the execution, the licence is irrevocable as contemplated by Section 60(b) of the Indian Easements Act, 1882 (for short 'Easements Act'). He submitted that the plaintiff went on changing the nomenclature of the documents which established payment licence fees and charges. For example, receipt No.519 dated 18.08.1976 at exhibit-28 issued in the name of defendant showed that receipt was issued towards deposit of rent. Another receipt No.3934 dated 15.09.1983 at exhibit-29 issued in the name of the defendant for Rs.10/- mentioning that it was for renewal of the gate pass. He submitted that in effect and substance, this is a payment of licence fee or charges. As the defendant is in possession of the suit premises since 1970, he is a protected licensee under Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Rent Act'). He also relied upon the affidavit dated 08.07.1986 made by Vasant Yeshwant Divekar in Notice of Motion No. of 1986 in S.C.Suit No.3245 of 1986 where he admitted that the suit premises were constructed in the year 1970. For all these reasons, he submitted that Application requires consideration.

4. On the other hand, Mr. Shetty supported the impugned orders. He submitted that in the first place, defendant did not plead case of irrevocable licence in terms of Section 60(b) of the Easements Act. Secondly, no evidence was adduced in support of plea of irrevocable licence and thirdly, no such contention was urged before the Courts below. He further submitted that both the Courts have considered receipts dated 18.08.1976 at exhibit-28 and dated 15.09.1983 at exhibit-29 and came to the conclusion that these receipts do not indicate payment of licence fee or charges. He submitted that in fact on

22.09.1981, resolution was passed by the plaintiff for collecting Rs.10/- towards issuing gate-pass to each vendor. The said resolution was produced at exhibit-15. The Courts below have considered this resolution and held that the said resolution is duly proved by P.W.1 Mohan M. Karnik. He, therefore, submitted that no case is made out for interfering with the concurrent findings or facts recorded by the Courts below after appreciating the evidence on record.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the defendant did not plead case of irrevocable licence as contemplated by Section 60(b) of the Easements Act. Not only that, he did not adduce any evidence to the effect that acting upon the licence, he had executed a work of a permanent character and incurred expenses in the execution. Apart from that, no such contention was advanced before the Courts below. In fact, the reliance placed by Mr. Shetye on the affidavit of Vasant Yeshwant Divekar dated 08.07.1986 does not advance the case of the defendant. A perusal of that affidavit shows that the affiant denied that the defendant constructed the suit premises and / or on his own cost and / or with oral permission of the then office bearers of the plaintiff society. He further stated that the suit premises, not being a room, had not been assessed by the Corporation for recovery of tax.

6. As far as the reliance on exhibits-28 and 29 is concerned, the Courts below, after appreciating the evidence on record, have concurrently held that this does not establish payment of licence fee or charges. The Courts below, therefore, held that defendant cannot claim to be a protected licensee in terms of Section 15A of the Rent Act. The findings recorded by the Courts below are based upon the evidence on record. It cannot be said that findings are perverse, being based upon no

evidence or that they are contrary to the evidence. It also cannot be said that on the basis of the evidence of record, no reasonable or prudent person would have arrived at those findings. Hence, no case is made out for interfering with the impugned orders. Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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