

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14586 OF 2018

Hemlata Nagnath Patil

And others

. ...Petitioners

Versus

Brahmadevi Bihari Rajak @ Chaudhary

...Respondent

....

Mr. Amit H. Yadav, Advocate for the Petitioners.

Mr. Rajesh G. Singh i/b. Kamal Choudhary, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2019

P.C.

1. Heard Mr. Amit Yadav, learned counsel for the petitioners and Mr. Rajesh Singh, learned counsel for the respondent, at length.

2. This Petition takes exception to the order dated 13.1.2015 passed by the learned Judge, Court Room No.14 of the Small Causes Court at Mumbai in L.E. Suit No.259/316 of 2008 as also the order dated 26.10.2017 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No.178/2015. By these orders, the Courts below held that the Small Causes Court has jurisdiction to entertain and try the suit.

3. The respondent, hereinafter referred to as the 'plaintiff', has instituted suit against the petitioners, hereinafter referred to as the

'defendants', *inter alia* contending that the defendants are occupying tenement No.402 along with extension thereto admeasuring 10 ft. X 22 ft. on the rear side of Room No.402 made of B.M. Walls with A.C. sheets roof in building No.12 at Wadia Estate, Bail Bazar, Magan Nathuram Road, Kurla, Mumbai – 400 070, as gratuitous licensee. The extension admeasuring 10 ft. X 22 ft. i.e. 220 sq. ft. on the rear side of Room No.402 is hereinafter referred to as the 'suit premises'. The plaintiff alleged that in rainy season of 1994, the residential premises occupied by the defendant collapsed. He had no other accommodation available for him. He was known to the plaintiff. The plaintiff allowed and permitted him, on his request, to use and occupy the suit premises for a temporary period as gratuitous licensee without requiring the defendant to pay any compensation for the use and occupation of the suit premises. In short, the plaintiff claimed possession of the suit premises contending that the defendant is a gratuitous licensee.

4. The suit was instituted on or about 18.7.2005. The plaintiff took out application for interim relief in the suit. The defendant filed reply and raised objection as regards the jurisdiction of the Small Causes Court to entertain and try the suit. The defendant came with the case that he had purchased the suit premises from one Vinod Mehndiratta for a valuable consideration of Rs.10,000/-. The learned

trial Judge framed necessary issues under Section 9-A of Code of Civil Procedure, 1908 (for short, 'C.P.C.') and permitted the parties to adduce evidence. The plaintiff did not enter into the witness box. The defendant examined as many as three witnesses. After considering the material on record, the learned trial Judge held that the suit is instituted by the plaintiff against the defendants under Section 41 of the Presidency Small Cause Courts Act, 1882. The relationship between the parties is that of licensor and licensee. The defendant failed to establish his ownership over the suit premises.

5. Aggrieved by the decision of the trial Court, the defendants preferred Revision Application, which was rejected by the Appellate Court. It is against these orders, the defendants have instituted present petition.

6. In support of this Petition, Mr. Yadav strenuously contended that the Courts below ought to have drawn adverse inference against the plaintiff for not entering into the witness box. The plaintiff came with the case that the relationship between the parties is that of licensor and gratuitous licensee. The burden is on the plaintiff to positively establish said case. The plaintiff, however, did not enter into the witness box to substantiate his case. The Courts below were, therefore, ought to have drawn adverse inference. He further submitted that

though the plaintiff alleged that the defendant was inducted in the suit premises some time in the year 1994, the documents on record clearly establish that the defendant is in occupation of the suit premises from 1991 onwards. The Courts below were, therefore, not justified in holding that the Small Causes Court has jurisdiction to entertain and try the suit.

7. On the other hand, Mr. Singh has invited my attention to the cross-examination of DW-1 and in particular paragraph-2 thereof. In paragraph-2, DW-1 admitted that he does not have proof to show that he purchased the suit premises from Vinod Mehandiratta. The question put to DW-1 and answer given by him in paragraph-2 read thus:

“Que.: You are not paying occupation charges to the plaintiff ?
Ans.: Plaintiff has no concern with the suit premises.”

8. Mr. Singh submitted that once the defendant failed to establish that he is occupying the suit premises as owner, the Courts below were justified in holding that the Small Causes Court has jurisdiction to entertain and try the suit on the basis of the averments made in the plaint. He, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the

material on record. As mentioned earlier, the plaintiff came with the case that after collapse of defendant's accommodation in July, 1994, he approached the plaintiff. At the request of the defendant, he was inducted in the suit premises for a temporary period as a gratuitous licensee without payment of any compensation. As against this, the defendant came with the specific case that he had purchased the suit premises from Vinod Mehndiratta for consideration of Rs.10,000/-. In the cross-examination of DW-1, he conceded that he does not have proof to show that he purchased the suit premises from Vinod Mehndiratta.

10. It is in that context one has to appreciate the findings recorded by the Courts below. In paragraph-10, the Appellate Court, after considering the fact that the defendant did not establish his case of ownership, proceeded to observe that while deciding the issue of jurisdiction what needs to be considered is the averments made in the plaint. I do not find that the Appellate Court committed any error in adopting this approach more so when the defendant failed to establish his ownership over the suit premises. The Appellate Court also referred to the decision of Full Bench of this Court in **Prabhudas Damodar Kotecha and another Vs. Smt. Manharbala Jeram Damodar and others, 2007 (4) ALL MR 651**, which was affirmed by the Apex Court.

11. In view thereof, no case is made out for interfering with the

impugned orders. Hence, the petition fails and the same is dismissed. It is made clear that the observations made in this order are tentative and *prima facie* only for the purpose of finding out the correctness of the impugned orders. The learned trial Judge will decide the suit on the basis of evidence on record on its own merits and in accordance with law uninfluenced by the observations made in this order.

12. All concerned parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)