

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

WRIT PETITION NO. 6747 OF 2018

Mr. Vasim Ismuddin Khan ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Ram Ugrah Singh – Advocate for the petitioner.

C. D. Mali – AGP/R – 1 & 2

Ashish Dubey – Advocate for the Respondent -3.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 16th JULY 2019.

P.C. :

Facts:

Petitioner Vasim Ismuddin Khan is a licensee and third-respondent Francis Vincent Soares is the licensor/owner. Seeking Vasim's eviction, Francis filed ejectment Application No. 108 of 2015, under Section 24 of Maharashtra Rent Control Act, before the Competent Authority, Konkan Division, Mumbai. On contest, the learned Competent Authority allowed Francis's application.

2. Aggrieved, Vasim took the matter in revision before the learned Additional Commissioner, Konkan Division, Mumbai, in Revision Application No. 410 of 2017. Concurring with the Competent Authority, the Additional Commissioner too refused

to interfere. Finally, Vasim has come before this Court, by filing this Writ petition.

Submissions:

Petitioner's:

3. Shri Ram Ugrah Singh, the learned counsel for the petitioner, has vehemently argued that both the Authorities below have committed gross errors in adjudication. To elaborate, he has submitted that though the very identity of the property is in dispute, the Authorities have not addressed that issue. Then, he has taken me through the record to contend that the leave and license agreement, Francis relied on before the Authorities, remained unregistered. So he contends that Section 55 of the Maharashtra Rent Control Act nullifies that document.

4. Shri Singh has further pointed out that under an agreement of sale with a builder what Francis got is one particular property. But Francis sought Vasim's eviction from entirely a different property. In elaboration, Shri Singh has submitted that the property Francis purchased or possessed from the builder is shown on the first floor. Yet the property shown in the eviction proceedings lies on the 4th floor. This vital aspect, he stresses, has missed the attention of both the Authorities.

5. In further elaboration, Shri Singh has also submitted that Vasim came into possession of the property even before the alleged leave and license agreement could be executed. Plainly put, Vasim purchased the property in 2011, through an

agreement of sale, by paying “part consideration.” So his possession must have been treated as that of the owner, rather than as that of a licensee.

6. In the end, Shri Singh has submitted that as the leave and license agreement remained unregistered, it ought not to have been looked into for whatever purpose. That apart, because of the dispute about the identity of the property, both the impugned orders, according to him, suffer from incurable legal infirmities. Thus, Shri Singh wants this Court to stay “at least for the time being” the execution proceedings Francis has taken out, before the Court could adjudicate the dispute finally.

Third Respondent’s

7. In response, Shri Ashish Dubey, the learned counsel for the third respondent, has submitted that if the leave and license agreement did not have registration, so did the alleged agreement of sale under which Vasim claims to have secured his possession. If neither could be looked into, the position remains that Vasim’s possession, if it were to be legally termed possession, is illegal. To elaborate, Shri Dubey has submitted that Vasim must be treated as a trespasser; if he is not a licensee—in permissive possession. In either perspective, Francis, Shri Dubey asserts, has taken recourse to due process of law; approached the competent authority; secured an order of eviction, which stands confirmed by the Revision Authority; and only then has he sought Vasim’s eviction.

8. Under Article 227 of the Constitution, this Court may

not, urges Shri Dubey, revisit the matter as if it were hearing an appeal and adjudicate on the disputed questions of fact. So he wants this Court to dismiss the Writ petition.

9. Heard Shri Ram Ugrah Singh, the learned counsel for the petitioner, and Shri Ashish Dubey, the learned counsel for the respondent no. 3.

Discussion:

10. Initially, Shri Singh wanted the Court to take up the matter for providing the petitioner an interim relief, especially, because of the impending execution proceedings. So the matter was listed out of turn. Yet the counsel on either side have advanced their arguments extensively, so I have decided to dispose of the Writ Petition finally.

11. Indeed, Vasim wanted to make heavy weather of his plea about the identity of the property. But Vasim's very conduct belies all his counter contentions on that point. Plainly put, in one breath Vasim has contended there is a dispute about the identity of the property; on the other, he has admitted Francis's title to the property in his possession. Vasim actually claims to have purchased the property from Francis, under an agreement of sale though. That said, claiming ownership—even possession—under an unregistered agreement of sale falls foul of the statutory law.

12. To elaborate, we must refer to the Transfer of Property Act ("TP Act"). The chapters and sections of this Act relating to contracts "shall be taken as part of the Indian Contract Act,

1872.” And paragraphs 2 and 3 of Sections 54, Sections 59, 107, and 123 shall be read as supplemental to the Indian Registration Act, 1908. So declares Section 4 of the TP Act.

13. As paragraphs 2 and 3 of Section 54 are supplemental to the Indian Registration Act, those two paragraphs describe how a sale must be made. First, sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. If the transfer, that is sale, concerns tangible immovable property worth one hundred rupees and more, it can be made “only by a registered instrument.” What Vasim relies on is an agreement or contract of sale. The same Section 54 of the TP Act also defines a “contract for sale.” Then, it clarifies that a contract for sale “does not, of itself, create any interest in or charge on such property.”

14. If we put Vasim’s claim under the statutory scrutiny of Section 54 of Transfer of Property Act; first, to claim a right and possession over the property, the claimant must have had the transaction registered. Here Vasim claims to have purchased the property under an agreement of sale. But ownership and agreement of sale cannot go together, for no person gets title under an agreement of sale.

15. Indeed, a person can gain possession under an agreement of sale. Section 53-A of Transfer of Property Act permits it under the doctrine of part performance. Then, this possession to be legitimate must conform to certain conditions. For that, let us see Section 53-A of the Transfer of Property Act.

16. Section 53-A begins with a presumption that there is a valid contract for sale of immovable property. Then, it prescribes how the contractee, transferee, or the agreement holder can gain possession without the actual transfer of title. The agreement holder, as Section 53-A permits, can take possession of the property under the “part performance of the contract.” Even if had been in possession of the property in some other capacity—say, as a tenant—his continued possession of the property after the contract for sale transforms him into a possessor under the contract for sale. Thus, the part performance, again, comes into play.

17. So long as the agreement holder is willing to perform his part of the contract, his possession stands protected. This possession is legitimate, though the transfer under the instrument of transfer “has not been completed in the manner prescribed” by the law. Plainly put, if the agreement holder gets the possession as set out in Section 53-A, then neither the transferor nor any other person under him can question the agreement holder’s right to possess the property. Of course, the transferor can insist on the agreement holder’s performing his part of the contract and completing the transaction as contemplated under the agreement. The whole arrangement under Section 53-A of TP Act falls short of transfer of title, though.

18. Now let us see what the Indian Registration Act has to say on this. It suffered an amendment in 2001, and sub-section

(1-A) was added, with effect from 24.09.2001. This subsection makes compulsorily registerable “contracts to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882”. If the documents is not registered, it “shall have no effect for the purposes of the said Section 53-A.” The statutory mandate is unmistakable.

19. Now, we must turn to Section 49 of the Registration Act. This provision describes the “effect of non-registration of documents required to be registered.” Let us assume that a document requires registration under Section 17 or under the TP Act, but it has not been registered. Then, that document cannot (a) affect any immovable property shown in the document; or (b) confer any power to be adopted, or (b1) be received as evidence of any transaction affecting the property shown in the document. Here, an agreement of sale needs to be registered.

20. But Section 49 provides for exceptions. The unregistered document “may be received as evidence of a contract in a suit for specific performance,” or as evidence of any collateral transaction not required to be effected by registered instrument. Here, neither contingency arises.

21. To conclude, Vasim cannot claim ownership under an agreement of sale, nor can he even claim possession under that document. To claim the former, Section 54 of the Transfer of Property Act and Section 17 (1) of the Indian Registration come in the way. To claim the latter, Section 53-A of the Transfer of

Property Act and Section 17 (1-A) of the Indian Registration Act come in the way.

22. Then, what is Vasim's possession, if it were possession? The possession must have been under the leave and license agreement. As is well-known, a licensee's possession is not possession proper; it is at best permissible possession.

23. True, Vasim asserts, and rightly so, the leave and license agreement has not been registered. Then what follows?

24. Section 55 of the Maharashtra Rent Control Act, 1999, provides that any agreement for leave and license or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.

25. Section 55 puts the onus on the landlord to get the agreement registered. If he has not got it registered, then the tenant's contentions about "the terms and conditions subject to which the premises have been given to [to the tenant or licensee] by the landlord shall prevail, unless proved otherwise. The landlord who contravenes this section shall, on conviction, be punished with imprisonment extending to three months, or with fine not exceeding Rs.5,000/-, or with both.

26. To take advantage of Section 55, Vasim has pleaded no terms and conditions under the leave and license agreement. He has, in fact, asserted his rights unconnected with the leave and license agreement. Better put, he has asserted himself in

derogation of Section 55 of the Maharashtra Rent Control Act.

27. So, to sum up, Vasim's possession cannot be as the owner for there is no registered conveyance—sale deed. Nor can it be under an agreement of sale for the transaction is hit by Section 53-A of the Transfer of Property Act. The last option is leave and license agreement. It has not been registered. We need not examine whether Vasim's coming into possession of the property under an unregistered leave and license agreement amounts to a collateral transaction not required to be effected by a registered instrument.

28. The consideration under Section 49 of the Registration Act is obviated because Vasim has admitted that Francis is the owner. Vasim's all other claims to legitimate possession—either as the owner or as an agreement holder—failing, his possession must be deemed to be permissive. Permissive because Francis let him enjoy the possession—until he required Vasim's eviction.

29. And the last straw on this case is this Court's adjudicatory limits. Under Article 227 of Constitution, as this Court exercises supervisory jurisdiction, I fail to see how the Authorities under the Maharashtra Rent Control Act, 1999, have exceeded their jurisdictional limit or committed any manifest errors of law.

As a result, I dismiss this writ petition. No order on costs.

[DAMA SESHADRI NAIDU, J.]