

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6826 OF 2019

Vipinchandra Harkisondas Saraiya

And others

...Petitioners

Versus

Mohamed Yusuf Noorani

and others

...Respondents

....

Mr. Avinash H. Fatangare i/b. Shaunak Satpute & Co. for the
Petitioners.

Mr. Uday Bobde a/w. Ms. Rubia Taneja and Ms. Shama Taneja,
Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 21st JUNE, 2019

P.C.

1. Not on board. At the request of Mr.Fatangare taken up for admission.
2. Heard Mr.Avinash Fatangare, learned counsel for the petitioners and Mr.Uday Bobde, learned counsel for the respondents, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 25.9.2017 passed by the learned Judge, Court Room No.20 of the Court of Small Causes at Mumbai below Exhibit-10 in L.E.& C. Suit No.142/188 of 2009 as also the judgment and order dated 11.1.2019 passed by the Appellate Bench

of the Small Causes Court at Bombay in Misc. Appeal No.194/2018. By order dated 25.9.2017, the learned trial Judge allowed the application Exhibit-10 made by the respondents, hereinafter referred to as the 'plaintiffs' and issued injunction restraining the defendants, their agents, servants or any other person claiming through them by order of temporary injunction from transferring, alienating or creating any third part right or interest in any manner in the suit property or part thereof till final disposal of the suit. The defendants were also directed to deposit the rent @ Rs.42,000/- per month in Court from the date of the application till date within one month of the order and further continue to deposit on or before 15th of every month till final decision of the Suit.

4. Aggrieved by that decision, the defendants preferred appeal. By order dated 11.1.2019, the Appellate Court dismissed the appeal and corrected the typographical error occurred in the sentence in clause (3) of the operative part of the order dated 25.9.2017 i.e. "Defendants shall deposit the rent @ Rs.42,000/- p.m..." as "Defendants shall deposit the rent @ Rs.42,000/- per annum..."

5. In support of this petition, Mr. Fatangare strenuously contended that the Courts below were not justified in directing the defendants to deposit compensation in the trial Court. He submitted that the letter dated 3.6.1970 at Exhibit-90 and the panchnama dated 20.4.1970 at Exhibit-91 clearly show that the Government has taken the

possession of the suit premises. As the Government has taken over possession of the suit premises, the plaintiffs cannot maintain present proceedings for recovery of possession. He submitted that on behalf of defendants, DW-3 H.K. Agarwal, Superintendent of Salt, office of Deputy Salt Commissioner has deposed that the actual physical possession is taken over by the State Government from the respondents.

6. Mr. Fatangare further submits that plaintiff No.6 is not a citizen of India and in fact is a citizen of Pakistan. Even on this ground, the Courts below were not justified in passing the impugned orders.

7. On the other hand, Mr. Bobde supported the impugned orders. He submitted that at the stage of hearing of application for interim relief, preliminary issue was framed. In pursuance thereof, the evidence was adduced. DW-1 to DW-3 examined on behalf of the defendants admitted that the Government has taken over only symbolic possession. He further submitted that the reliance placed on panchnama of 1970 is of no consequence at this stage as on 27.3.1993 leave and licence agreement was executed between plaintiff No.6 and predecessor of the plaintiff in favour of defendant No.1. He further submitted that in paragraph-14, the Appellate Court also observed that there is no dispute about the amount of compensation which was increased by mutual consent to Rs.42,000/- per annum from 1.9.1981. He, therefore, submitted that the reliance placed on the panchnama Exhibit-91 does

not advance the case of the defendants.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The defendants contended that the plaintiff is divested of his title and the Government has taken possession of the suit premises. Reliance is placed on the panchnama dated 20.4.1970 at Exhibit-91. *Prima facie* at this stage it is not possible to accept this submission. As mentioned earlier, at the stage of hearing of the application for interim relief, defendants examined DW-1 to DW-3.

9. The learned trial Judge observed in paragraph-8 that the witnesses of the defendants during the evidence of preliminary issue admitted that the plaintiffs are in possession and the plaintiffs have not lost their possession. The Government has not taken the possession of the suit property from the plaintiffs.

10. In paragraph-9, the learned trial Judge noted that the admissions given by the witnesses of the defendants are sufficient to conclude that till date the possession of the suit property is with the plaintiffs and the Government has not taken possession from them. The learned trial Judge has further observed that the defendants admitted that the suit property was given to them by the plaintiffs on leave and licence agreement basis.

11. In paragraph-10, the learned trial Judge dealt with the

panchnama Exhibit-91 and in the light of the admissions given by DW-1 to DW-3 held that only symbolic possession is taken over by the Government.

12. In paragraph-17, the learned trial Judge observed that the defendants admitted that they have paid rent upto the year 2002. In the cross-examination the defendants admitted that amount of compensation was increased by mutual consent to Rs.42,000/- from 1.9.1981 and same was not increased thereafter.

13. Insofar as the Appellate Court is concerned, in paragraph-14 the Appellate Court noted the admitted facts emerging from record. In paragraph-16, the Appellate Court noted submission by the defendants that by virtue of adverse possession, they have become the owners of the suit premises. Thus, after considering the material on record, the Courts below have not accepted the case of the defendants that it is the Government which is in actual possession of the suit premises and on the basis of the agreed compensation @ Rs.42,000/- per annum the Appellate Court modified the trial Court's order, as indicated earlier.

14. Mr. Fatangare submitted that in any case plaintiff No.6 is not a citizen of India and is a citizen of Pakistan. I do not find any merit in this submission.

15. In view thereof, the petition fails and the same is dismissed. It is made clear that the observations made herein are only tentative

and *prima facie* and are made only for the purpose of testing the correctness of the impugned orders. The learned trial Judge will decide the suit on the basis of the evidence on record and in accordance with law uninfluenced by the observations made in this order.

16. At this stage, Mr. Fatangare orally seeks extension of time by four weeks for complying the order of the Appellate Court and assures that the petitioners will not seek extension of time. At his request, time stipulated in the Appellate Court's order for depositing the compensation is extended by four weeks from today with express understanding that no further extension shall be sought for and granted by this Court. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)