

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.38 OF 2016
IN
CIVIL SUIT NO.354 OF 2014

1. Shri Shamrao Moreshwar Kulkarni

R/at. 365/38, Ghorpade Peth,
Ekbote Colony, Pune 411 042.

2. Shri. Laxman Moreshwar Kulkarni

R/at. 365/38, Ghorpade Peth,
Ekbote Colony, Pune 411 042.

3. Shri.Swapnil Shamrao Kulkarni

R/at. 365/38, Ghorpade Peth,
Ekbote Colony, Pune 411 042.

... Applicants

Versus

1. Shri. Vijay Jasraj Rahatekar

R/at. Archibelle, 1208/1209,
Shivajinagar Bhamburda,
Pune 411 004.

2. Shri. Ravindra Nainsukh Sanghavi

R/at. Lane No.20, Gandhi Bhavan Road,
Dahanukar Colony,
New Era Heights, Flat No.2,
Pune 411 038.

3. Smt.Kusumbai Jawarharlal Rahatekar

R/at.Archibelle, 1208/1209

Shivajinagar Bhamburda, Pune 411 004. ... Respondents
Mr.Ashok Tajane a/w Mr. J. N. Gite for the applicants.
Mr.J. S. Kapre a/w Ms.Tejas Kapre for respondent nos.1 to 3.

CORAM : DAMA SESHADRI NAIDU, J.

JUDGMENT RESERVED ON : 14th OCTOBER 2019.

JUDGMENT PRONOUNCED ON : 18th DECEMBER, 2019

JUDGMENT (PER DAMA SESHADRI NAIDU, J) :

Heard finally at the admission stage by the parties' consent.

2. In Civil Suit No.354 of 2014, the Applicants are the original Defendants 1 to 3; the first Respondent is the original Plaintiff, and the Respondents 2 and 3 are the original Defendants 4 and 5.

3. The Applicants-Defendants are challenging the Judgments and Orders, dated 4.8.2015, passed by the 7th Additional Judge, Small Causes Court, Pune. The Trial Court rejected the Defendants applications under Section 9A and Order 7, Rule 11 of C.P.C.

Facts:

(a) The Scope of the Suit:

4. In September 2014, Vijay Jasraj Rahatkar filed Civil Suit No. 354 of 2014, against Shamrao Moreshwar Kulkarni and others. He wanted the

Defendants to communicate the fair rent for the property in his occupation; in the alternative, he wanted the Trial Court to decide it. Vijay Jasraj also wanted the 1st and 2nd Defendants to execute a fresh registered Lease Deed of the suit property for a further 99 years in favour of him and the fourth Defendant. Vijay Jasraj, finally, wanted the Trial Court to injunct the Defendants against his forceful dispossession.

(b) The Property:

5. According to Vijay Jasraj, the suit property, then vacant, measuring 991.47 sq. mts., lies in Bhamarudra, Shivaji Nagar, in Pune Municipal Corporation limits. The owners originally leased it for 99 years to Daji Hari Lele. As the lease was for a long term, he constructed a house on one part of the property and sold it in December 1926 to Vasudeo Eknath Mengale. Again Vasudeo, in September 1947, leased out the 'northern portion' of about 5062 sq. ft., to Umakant Bhaskar Joshi for 72 years. Umakant, then, constructed a house in that portion. By 1935, not much vacant land remained.

6. In March 1991, the heirs of Mengale, who purchased the leasehold rights in 1947, sold their leasehold rights to Jasraj Rathnakar, the Plaintiff's father. It was through a registered deed. The property thus 'sold' measures

991.47 sq. mts., with a structure measuring 280 sq. mts. The rights transferred include “ownership rights in the construction standing thereon with a right to recover the rent from the subleases and tenants kept by Mahadev Mengale.” Those sublessees are Ramesh Devarchand Mutha and Ravindra Nainsukh Singhvi, who is the fourth Defendant in the suit.

7. There arose disputes amongst the sublessees; it has led to WP Nos.2650 of 1986 and 2651 of 1986. And those writ petitions resulted in a compromise: Ramesh Mutha and Ravindra Singhvi agreed to transfer all their rights in the property acquired by them from Mengale family to Vijay Jasraj and Defendant No. 5.

8. Ramesh Mutha transferred to Plaintiff Vijay Jasraj and the fifth Defendant his rights up to 80.61 %, through a registered Sale Deed, dated 14.3.1996, together with a right to acquire the remaining leasehold rights from Ravindra Singhvi, the Defendant No. 4. Ramesh Mutha is said to have transferred his rights with the fourth Defendant’s consent. Thus, the Plaintiff and the 5th Respondent acquired leasehold rights, together with a right to acquire the remaining leasehold rights from Mr. Ravindra Singhvi, the fourth Defendant. So, K. Rahatekar, the fifth Defendant, filed Special Civil Suit No. 987 of 1993, against the fourth Defendant for specific

performance of the above Agreement. It was, it seems, based on the compromise arrived at in Writ Petition Nos.2650 of 1986 and 2651 of 1986.

9. The first and the Second Defendants started claiming rights over the suit property based on the alleged Sale Deed to have been executed between the legal heirs of Shirole family and Saraswatibai Moreshwar Kulkarni. They alleged that they are the legal heirs of late Saraswatibai. So the Plaintiff sent a notice to them in October 2013 that he was ready to execute a fresh Lease Deed on the same terms and conditions as the original Lease Deed contained. Those defendants, in January 2014, asserted that the lease was to expire in March 2014. Once again, the Plaintiff informed the first and the second defendants that he was ready to execute a fresh Lease Deed. Then, the Plaintiff, in April 2014, called upon the first and the second Defendants, reiterating his willingness to enter a fresh lease. But the Defendants 1 to 3 filed Regular Civil Suit No. 742 of 2014 in the Civil Court, Pune. They sought the Plaintiff's eviction.

10. On the other hand, the Plaintiff filed Civil Suit No.354 of 2014 that the Defendants are entitled to only fair rent and that the Plaintiff is ready and willing to pay the fair rent.

11. First, the Defendant Nos. 1 to 3 applied under Order 7 Rule 11 of C.P.C. for the rejection of the plaint on the grounds that they allege that the Plaintiff has not paid the requisite court fee. They have also maintained that the suit is not maintainable before the Small Causes Court in terms of Section 33 (1) (c) of the Maharashtra Rent Control Act, 1999. They have also disputed the nature of the property. So they applied under Section 9A of C.P.C. for the non-suiting the Plaintiff.

12. On 4th August 2015, the Trial Court rejected the defendants' application under 9A of C.P.C. On the same day, it also rejected the defendants' application under Order 7, Rule 11 of C.P.C. So, aggrieved, the defendants 1 to 3 have filed this Civil Revision Application, assailing both the orders.

13. I have set out above the convoluted litigious facts as I have gathered from the record and also from the counsel's arguments. There may be an error or two, but that will not affect what is on record. And the trial Court may rely on the facts as the record reflects, rather than as this Court has set them out. Here, in this Revision Application, the question is narrow: Has the trial Court been justified in rejecting the Defendants' applications

under Section 9A and Order 7, Rule 11 of CPC? So, let us answer that question alone.

Submissions:

Petitioners:

14. The petitioners' counsel argues that the Trial Court has not followed the procedure. According to him, it ought to have framed a particular issue and allowed the parties to lead evidence on the question of maintainability. He has persistently contended that the dispute concerns a piece of open land and that the parties have no landlord-tenant relationship, both of which are *sine qua non* for the suit to be maintained.

15. The learned counsel has also stressed that the Plaintiff has filed the suit for specific performance of a contract that has already ended; it has nothing to do with any tenancy. And the suit is only a counterblast to the one filed by the defendants. He has also elaborately addressed the Court on the merits, too. In this context, the learned counsel has contended that the property is huge, valued in crores. But no court fee commensurate to its value has been paid.

16. The learned counsel has submitted that both the orders—one under Section 9A and the other under Order 8, Rule 11—are cryptic and devoid of any reasoning.

Respondents:

17. On the other hand, the learned counsel for the Respondent has reminded me about the cardinal principle of law: adjudication under either Section 9A or under Order 7, Rule 11 depends on the plaint pleadings and nothing else. Particularly, it does not depend on the defence. According to him, the merits of the matter cannot be prejudged.

18. The learned counsel has argued to meet all the defendants' assertions about the nature of the land, the relief sought, and the court fee, too. To conclude, he has submitted that the impugned orders suffer from no legal infirmity, and the revision application deserved to be dismissed.

19. Heard the learned counsel for the applicants and the learned counsel for the respondents.

Reasoning:

20. As gathered from the impugned order, I understand that the defendants' objections flow from these contentions: (a) the Plaintiff has sought the relief of specific performance, and it is beyond the jurisdictional

purview of the Small Cause Court; (b) the property has been undervalued; (c) there is no tenancy dispute, so the Maharashtra Tenancy Act does not apply; (d) nor is there any landlord-tenant relationship between the parties. Here, I disregard all references to the merits of the matter, though they, too, have been argued about extensively.

21. That said, as rightly contended by the respondents' counsel, the maintainability of any suit depends on the suit pleadings, not on the rival party's defence. If we strictly go by the plaint averments, we gather that the dispute concerns tenancy and that the Plaintiff avers about the landlord-tenant relationship, too. Given the convoluted assignment and the apparent lack of privity of contract between the parties, as pleaded by the defendants, are matters of merit and are based on the evidence to be led. We cannot prejudge them. Nor can we non-suit a plaintiff on the premise he has a very weak case, or the case he has set up is unconvincing or uninspiring.

22. Even on the Court Fee, too, the Trial Court has given reasons why it was not inclined to throw out the case at the threshold.

23. Therefore, under these circumstances, I see no reason how I can interfere with the Trial Court finding by exercising powers under Section

115 of C.P.C., essentially, a power of revision that concerns jurisdictional errors rather than the correctness of adjudication.

24. So, I dismiss the Civil Revision Application, without prejudice to the defendants' right to lead evidence on all aspects they have raised under Section 9A and Order 7, Rule 11 of C.P.C.

No order on costs.

[DAMA SESHADRI NAIDU, J.]

L.S.Panjwani, P.S.