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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1531 OF 2019
WITH
CIVIL APPLICATION NO.3558 OF 2011

Abdul Kadar Abdul Matin Siddique ...Appellant /
V/s. ...Applicant
Sakinabi Abdul Matin Siddique & Ors. ...Respondents

Ms.Madhuri R. Raibagkar for the Appellant / Applicant

Mr.Mohan V. Kanade i/b Ms.Sushma Vishwakarma for the
Respondent Nos.1 to 3.

Mrs.Sheetal Mane – Tadke for the M.C.G.M. - Respondent No. 5.

CORAM : R.D. DHANUKA, J.
DATE : 20TH JANUARY, 2020.

P.C. :-

1. By this First Appeal, the appellant (original plaintiff) has impugned the judgment and order dated 14th March, 2011 passed by the learned Trial Judge dismissing L.C. Suit No.31 of 2006 filed by the appellant *inter-alia* praying for a declaration that the appellant, defendant nos.2 and 3 each having 7/24 share whereas the defendant no.1 had 1/8 share in Room No.91 admeasuring 10' x 15' situated at 9 - Worli Labour Camp, Sasmira Marg, Worli, Mumbai - 400 025 and for other reliefs. By consent of parties the First Appeal is heard finally at the admission stage.

2. The appellant is the son of the respondent no.1 and

brother of the respondent nos.2 and 3. The respondent no.4 is cooperative society. The respondent no.5 was the landlord in respect of the suit premises.

3. It was the case of the appellant before the Trial Court that late Abdul Matin Abdul Siddique was the grand-father of the appellant. During his life time, he was a tenant in respect of the tenanted premises. The respondent no.5 was the landlord in respect of the suit premises. The tenants in the said building formed a society i.e. respondent no.4. The said deceased grand-father of the appellant and the respondent nos.2 and 3 expired some time in the year about 1959-1960. It was the case of the plaintiff that the father of the plaintiff expired intestate on 5th August, 1983. The plaintiff along with his father and the defendant nos.1 to 3 were staying together in the suit premises. It was the case of the plaintiff that he used to contribute the rent and the outgoing in respect of the suit premises. He has produced a copy of the rent receipt for the year 2005 alleged to have been paid by him in respect of the suit premises.

4. It was the case of the plaintiff that he acquired another residential premises in the year 1986 for his residence for the sake of convenience and had not given up / relinquished his right, title or interest in the suit premises till date. According to the plaintiff only in the year 2005 when the respondent nos.1 to 3 obstructed the entry of the plaintiff from entering into the suit premises, he made enquiry

and came to know that the developer had agreed to offer permanent alternate accommodation in respect of the suit premises. He accordingly addressed a letter to the developer and the society. On 9th January, 2006, the plaintiff filed the L.C. Suit in the Civil Court. The suit was resisted by the defendant nos.1 to 3 by filing the written statement. The defendant nos.2 and 3 gave consent for transfer of the suit flat in favour of the defendant no.1.

5. The Trial Court permitted the plaintiff to carry out the amendment in the plaint. The Trial Court framed seven issues for determination. The plaintiff examined himself as the sole witness. The defendant no.1 also entered the witness box and produced several documents. By a judgment dated 15th March, 2011, learned Trial Court dismissed the said suit and rendered the findings on all the issues in favour of the defendant nos.1 to 3 and against the plaintiff. The said judgment and decree is impugned by the appellant (original plaintiff) in this first appeal. There was gross delay in filing the said appeal. The delay in filing the first appeal however, came to be condoned.

6. Learned counsel for the appellant (plaintiff) invited my attention to the prayers in the plaint and the findings rendered by the learned Trial Court in the impugned judgment. It is submitted by the learned counsel that the plaintiff was staying with his father and the defendant nos.1 to 3 in the suit premises till the year 1986. In the year 1986, he shifted to the alternate premises for the sake of

convenience. She submits that the relation of the appellant with the defendant nos.1 to 3 were also cordial. She submits that the plaintiff also used to contribute various amounts towards the rent and electricity expenses in respect of the suit premises. She submits that the landlord and the society however in collusion with the defendant no.1 offered permanent alternate accommodation to the defendant no.1 though the plaintiff had 7/24 share in the suit premises.

7. Learned counsel for the plaintiff submits that her client had filed the civil suit before the learned Trial Court within the time prescribed under the Limitation Act. The cause of action had arisen according to the learned counsel for the plaintiff only in the year 2005 when the defendant nos.1 to 3 prevented the entry of the appellant in the suit premises. She submits that the learned Trial Court thus could not have dismissed the suit on the ground of limitation. Learned Counsel also challenged the findings rendered by the learned Trial Court in the appeal memo filed before this Court.

8. Learned counsel also invited my attention to the order passed by the Maharashtra Wakf Tribunal at Aurangabad in Wakf Suit No.52 of 2016 in support of her submission that the room no.10 to which her client had shifted in the year 1983 was occupied by Kamal S. Badshah as is apparent from the said order passed. Learned counsel for the plaintiff on instructions however, informed this Court that in the year 1986, the plaintiff has shifted to another premises at Worli and has been staying therein since then.

9. Learned counsel for the defendant nos.1 to 3 on the other hand invited my attention to various documents annexed to the compilation filed before this Court forming part of the record before the learned Trial Court and would submit that since the year 1983, the plaintiff had never stayed in the suit premises and the same was occupied by the defendant nos.1 to 3. All the outgoings in respect of the suit flat including the rent and electricity charges have been paid by his clients. He submits that only in the year 2005 for a limited period the plaintiff fraudulently obtained a rent receipt from the landlord to create evidence so as to file the said false and frivolous suit.

10. Learned counsel for the defendant nos. 1 to 3 submits that the defendant nos.2 and 3 have already given their consent for transfer of the suit premises in favour of the defendant no.1 who is the mother of the plaintiff and defendant nos.2 and 3 who is about 90 years old. He submits that the physical possession of the said suit premises was handed over by the defendant no.1 to the society for giving permanent alternate accommodation. He invited my attention to the Development Agreement dated 17th August, 2003 entered into between the defendant no.4 – society and the defendant no.1 and the Memorandum of Understanding dated 18th March, 2005 between the society and the defendant no.1. He submits that the developer has entered into an Individual Agreement dated 29th March, 2007 with the defendant no.1 in respect of the suit premises offering

permanent alternate accommodation in the new building constructed by the said developer.

11. It is submitted by the learned counsel that the learned Trial Judge after considering all the evidence produced by both the parties has rightly dismissed the suit by rendering the findings on all the issues against the plaintiff and in favour of the defendant nos.1 to 3. He submits that in view of the obstruction created by the plaintiff by making this false claim, the developer has not handed over possession of the permanent alternate accommodation to the defendant no.1 so far.

12. A perusal of the allegations made in the plaint indicates that it was the case of the plaintiff that till 1983, he was in possession of the suit premises jointly with his father and the defendant nos.1 to 3. It is the case of the plaintiff himself that since 1986 he has shifted to an alternate premises. The plaintiff could not show before the Trial Court or even before this Court whether he had at any point of time visited the suit premises till 2005 or had contributed any amount towards rent or the electricity charges. On the contrary, the defendant no.1 had entered the witness box and proved that all the outgoings including the rent and electricity charges were incurred by her.

13. During the course of argument this Court upon raising a query to the learned counsel for the plaintiff, the learned counsel on

instructions from her client who is present in this Court states that her client has been already residing separately since 1986 at Worli. Learned counsel could not produce even a single document for consideration of this Court even at this stage to show that the plaintiff had contributed any amount towards rent, outgoings and the electricity charges in respect of the suit premises. The plaintiff could not dispute the documents produced by the defendant nos. 1 to 3 before the learned Trial Court.

14. Though the plaintiff was allowed to carry out amendment to the plaint, the plaintiff has admittedly not challenged the agreements entered into between the society, the developer with the defendant no.1 in the plaint. The said document has thus attained finality.

15. A perusal of the findings rendered by the learned Trial Court clearly indicates that after considering oral as well as documentary evidence, the learned Trial Judge has held that the plaintiff had failed to prove that he had any share in the suit premises. He had also failed to prove that he had right to use, occupy and possess of permanent alternate accommodation. On the other hand, the defendant nos.1 to 3 had proved that the plaintiff was already allotted his share by his father during his life time and the plaintiff had relinquished his alleged share in the suit premises.

16. In my view, considering the oral as well as documentary

evidence, the learned Trial Judge has rightly recorded the findings in favour of the defendant nos.1 to 3 and against the plaintiff. Since the plaintiff had relinquished his right in the suit premises in the year 1983 or latest by 1986, the suit filed in the year 2006 was *ex-facie* barred by law of limitation. I do not find any infirmity in the impugned judgment and decree rendered by the learned Trial Judge.

17. The society as well as the developer have already entered into an agreement for permanent alternate accommodation in favour of the defendant no.1. No interference with the impugned judgment and decree passed by the learned Trial Judge is warranted. The appeal is devoid of merit and is dismissed with cost quantified at Rs.25,000/- which shall be paid by the plaintiff to the defendant no.1 within two weeks from today.

18. In view of dismissal of the First Appeal, Civil Application No.3558 of 2011 does not survive and is accordingly disposed off.

(R.D. DHANUKA, J.)