

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 34 OF 2010

Smt.Rehana A. Ansari, adult
Indian Inhabitant, 42 yrs,
Residing at 192, Ambedkar
Chowk, Zopadpatti Pant Nagar
Ghatkopar (E), Mumbai .. Appellant

Versus

Mr.Jagdish Kalwani, adult,
Indian Inhabitant, residing at
103, Hare Krishna Naar, Jawahar
Road, Ghatkopar (E), Mumbai .. Respondent

...

Mr. Vivek Dubey i/b Ajaykymar Upadhyay for the appellant.
Mr.Rupesh Sohoni for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 30th NOVEMBER, 2021

JUDGMENT :-

1 This is an appeal filed by the original plaintiff who had instituted S.C. Suit No.2301 of 2007 in the City Civil Court at Mumbai, claiming that she was in use, occupation and peaceful possession of property no.192, Ambedkar Chowk, Zopadpatti, Pant Nagar, Ghatkopar (E) Mumbai, and she sought an

injunction against the defendants, his agents, servants, representatives from entering, interfering, disturbing, dispossessing her rights in a suit premises described above.

On her suit being dismissed on 21st November 2009 by the City Civil and Sessions Court, Greater Mumbai, the present Appeal under Section 96 of the Code of Civil Procedure is instituted.

2 The Appeal is admitted on 19/7/2010 and on the Civil Application No.84/2010 for grant of stay, the following order is passed :

“2. By order dated 14th January 2010 this Court ordered that there will be status quo with regard to Hut No.192 which is the subject matter of the present First Appeal. It was made clear that there was no order passed in respect of Hut No.219 and liberty was given to the respondent to take such action as he is entitled to in respect of Hut No. 219.

3. Mr.Patil, learned counsel for the applicant makes a statement that the applicant is in possession of Hut No.192 and is not concerned with Hut No.219. Likewise, Mr.Mishra, learned counsel for the respondent states that the respondent is concerned with Hut No.219 and is not concerned with Hut No.192.

4. In view of this, there shall be interim order in terms of prayer clause (a).

5. It is expressly made clear that prayer clause (a) does not pertain to Hut No.219.

As a consequence, the appellants possession over Room/Hut/Shanty No.192 is continued.

3 Heard Advocate Vivek Dubey for the appellant and Mr.Rupesh Sohoni for the respondent. With their able assistance, perused the Record and Proceedings of the Appeal.

The dispute pertain to House no.192, which is a hut/shanty and the plaintiff Smt.Rehana Ansari claim to be in possession of the suit premises which was constructed by her late father Mohd. Ansari and which was made over to her at the time of her marriage and since then, that has been her matrimonial house. In support of her claim of being in possession of the suit premises, she rely upon, ration card as well as the electricity meter. She also bank on an Election Identity card issued to her by Election Commission of India which mention the address of the suit premises. Apart from this, the birth certificate, school certificate of her children also carry the same address as per the plaint. The plaint allege that the defendant has no right, title, interest in the suit premises, but as the locality is being developed under the Slum Rehabilitation Scheme, the defendant in an attempt to grab the premises of the plaintiff, visited the suit property on 5th May 2007 and threatened the plaintiff to vacate it within a period of 15 days and on failure, threatened with an action of being thrown out. She made an attempt to lodge the

complaint to the concerned police station but on account of the influence of the defendant in the locality, the same was not taken on record. On 19th May 2007, the defendant again visited the premises along with his associates and once again, threatened her and expected her to succumb his influence and muscle power.

4 In the wake of the aforesaid pleading, the plaintiff sought an order of injunction restraining the defendant from interfering, disturbing her possession on the suit premises being Hut No.192.

The pleadings in the suit were traversed by the defendant by filing a written statement and it is pleaded that the plaintiff is occupying Hut no.219 which belong to the defendant but by producing the documents of Hut No.192, the plaintiff had obtained an order of injunction of status quo, though she is physically occupying occupation of Hut No.219 and not Hut No.192 as claimed by her. The defendant plead that the plaintiff was occupying Hut no.192 at some point of time but since December 2003, she along with her husband approached him and requested him to allow them to use and occupy his hut 219 and he had conceded to the said request. The defendant plead a case that he had acquired Hut no.219 from Smt.Phulabai Tupsunder on 21/4/1994 and she had executed an affidavit transferring the Hut no.219 in his favour but the said document is misplaced and therefore, not produced on record. It is also

pleaded that there is no number allotted to any house like 192 or 219, and therefore, the same do not find mention in any of the documents. Based on his interest in room no.219, the defendant has pleaded that he was issued a photo pass and since a Society is formed for development of the slum under the name and style of Trilokya Co-operative Housing Society, he is even admitted to its membership and has secured a share in the said Society by depositing the necessary amount. The defendant has specifically pleaded that the two Huts are situated about 200 metres away but neither the plaintiff nor the defendant has any concern of whatsoever nature with Hut No.192.

5 Based on the aforesaid pleadings, the City Civil Court, Mumbai framed the following issues :-

- (1) *Does the plaintiff prove that she is in possession of the suit property i.e. Room No.192, Ambedkar Chowk, Zopadpatti, Pand Nagar, Ghatkopar (E), Mumbai 400075?*
- (2) *Does the plaintiff prove that she is entitled to injunction as claimed ?*

6 The plaintiff tendered her evidence affidavit and it was read over, while she was in the witness box. She produced the original ration card issued by the Rationing Authority as well as brought on record the Election Identity Card which were exhibited. She was subjected to cross-examination where she re-

iterate that the hut which she was occupying was bearing no.192. She deny the suggestion that she was residing in some other room on leave and licence basis. She state that her husband is not residing with her and she is not aware where he is residing at present. The suggestion that her husband entered into an agreement with the defendant for leave and licence for room no.219, is denied. She specifically deny the suggestion in the following words :

"It is not correct to say that the suit property does not bear room no.192 but I am residing in the room which bear room no.219".

7 The defendant filed on record his affidavit in examination in chief wherein he claim to be the owner of suit premises, bearing no.219, which he depose that he had acquired from Smt.Phulabai Tupsunder through an affidavit and Power of Attorney dated 21st April 1997. In his affidavit, he has re-iterated that there are many huts/shanties, but there are no numbers allotted to the huts like 192 or 219, but these numbers are taken from voters list of 1995 as there was proposal to develop the said slum under the Slum Rehabilitation Scheme. He re-iterate his stand in the written statement and bring on record the Power of Attorney executed by Smt.Phulabai Tupsunder as well as the photo pass application of Smt.Phulabai along with his own photo pass application. A hand written agreement dated 22nd December 2003 is exhibited by him, in support of his plea that he

had leased out the premises to husband of the plaintiff.

He is subjected to cross-examination on behalf of the plaintiff and he admit that the voters list contain the name of the plaintiff. As far as the agreement in writing executed between him and the husband of the plaintiff, he admit that the plaintiff is not a signatory to it. He re-iterate that house where plaintiff is residing, is not bearing hut no.192 but it is hut no.219, which was given to her on leave and licence basis by him.

8 In the wake of the material placed on record before the City Civil Court, the learned Judge referred to it for determination of the issues. As far as issue no.1 is concerned, being whether the plaintiff has proved that she is in possession of the suit property i.e. Hut No.192, Ambedkar chowk, the learned Judge make a reference to the agreement executed between her husband and the defendant in form of leave and licence based for a period of 11 months and that the plaintiff has no where disputed the agreement at Exhibit-17 and the written assurance given by the husband of the plaintiff at Exhibit-24 which is brought on record by the defendant. It is further recorded that there is no denial from the plaintiff to the version of the defendant and this lends support to the case of the defendant that the room was given to the husband of the plaintiff on leave and licence by the defendant and he failed to vacate the same i.e. Room no.219. As far as the ration card and election identity is

concerned, the learned Judge has recorded that it is quite probable that the ration card and election card may be issued on the basis of the earlier hut occupied by the plaintiff in the same vicinity and therefore, in light of the specific defence of the defendants, the said documents do not bear any significance.

The issue no.1 is therefore, answered in the negative by recording that the husband of the plaintiff who is the head of the family has not come before the Court and the Suit is filed by the plaintiff, who is his wife and this cast a doubt.

Recording that the plaintiff has failed to prove that she is residing in hut no.192, as claimed by her, she is held not entitled by any order of injunction. The Suit is therefore, dismissed with costs.

9 When I have perused the documents which are compiled in the Record and Proceedings and which were placed before the learned trial Court, it can be seen that the ration card placed on record is in the name of Anwar Ahmed Ansari, i.e. the husband of the plaintiff and her name is also included in the ration card as the member of the family along with her children and brother. The ration card, however, do not mention the room number, but the address given is Ambedkar Chowk, Pant Nagar, Ghatkopar (East). However, the electricity bill for the month of March 2007, placed on record in the name of Rehana Ansari give the address as 192, Ambedkar Chowk, Zopadpatti, Pant Nagar,

Ghatkopar (East). Further, her election card issued on 15/11/1995 also mention the same address as Room no.192. The complaint which the plaintiff had lodged to the police station is also brought on record in respect of room no.192.

The suit property in which the plaintiff claimed interest is Hut no.192 and the defendant created a confusion by stating that she has vacated the suit property and is residing along with her husband in Hut no.219, which was owned by Phulabai Tupsunder. Pertinent to note that when the affidavit of Smt.Phulabai brought on record by the defendant is perused, where she claim that she is in exclusive use, occupation and possession of the hut premises, the affidavit do not give the number of the hut and description given is "hut admeasuring 12 x 12 sq.ft situated at Dr.Ambedkar Chowk, Pant Nagar, 90 feet Road, Ghatkopar (East). The correspondence made by the defendant with the competent authority and Deputy Collector for grant of permission u/s.22 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 has a reference of hut no.219. The documents of membership of the proposed Society in the name of the defendant are also of Hut no.219.

Apart from this, the agreement on which the defendant is placing reliance as an agreement between himself and the husband of the plaintiff also do not contain a mention of the room number, but the description is room admeasuring 10 x

15 sq.ft belonging to the defendant, aged 45 years located at Dr. Ambedkar Chowk, 90 ft Road, Pant Nagar, Ghatkopar (E). The said document exhibited as Exhibit-17 so also documents at Exhibit-24 do not give any room number and therefore, these documents could not be believed to be the documents qua hut no.219 and the learned Sessions Judge has clearly erred in reading the documents in favour of the defendant.

Further, what has been ignored is an important aspect of the matter i.e. voters list which are prepared in the year 1995 and the said voters list which was produced before the trial court clearly mention the room number and the name of the occupants and as far as hut no.192 is concerned, the name of the plaintiff Rehana Ansari and her husband is recorded against it, in contrast to hut no.219 where name of Tupsunder family is mentioned, and three members are shown to be resident of the said room; including Phulabai Namdev Tupsunder who has transferred her right and interest in Hut no.219 to the defendant.

10 While passing the impugned judgment, the learned Judge of the City Civil Court has failed to appreciate the evidence placed before him and failed to note that the suit property is hut no.192 and the plaintiff all the while produced on record documents to establish her possession in hut no.192 since her election card, electricity bill mention hut no.192. Further, the voters list also show that Rehana Ansari is residing in hut no.192.

On the contrary, the defendant no.2 is clearly claiming to be in use, occupation and possession of suit property 219 and the voters list record the name of Tupsunder against hut no.219. It is thus apparent that the house/shanties were given distinct numbers and hut no.192 is distinct from hut no.219 and what the plaintiff is claiming is, occupation and possession of hut no.192 and once her possession over the said hut is proved by the documents placed on record, the learned Judge has clearly erred in refusing a relief of injunction in her favour. The evidence brought on record by the defendant and his defence that the husband of the plaintiff had entered into a lease agreement with him and has agreed to vacate, bear no consequence as both the said documents do not give the identification of the room number and no where it is mentioned that it is room no.219. The defendant has utterly failed to dislodge the claim of the plaintiff over room no.192 and the learned Judge has also failed to consider the evidence brought on record by the plaintiff to establish her claim staked in the plaint, making her entitle for the relief of injunction against the defendants.

This error is apparent from appreciation of evidence brought on record and resultantly, the impugned judgment and order rejecting the suit filed by the plaintiff cannot be sustained and the judgment dated 21/11/2009 in S.C. Suit No.231 of 2007 is quashed and set aside.

11 While admitting the Appeal on 19th July 2010, the possession of plaintiffs/appellants over room no.192 is protected. This Court has specifically recorded that the respondent is concerned with Room no.219 and not with Room No.192.

 In the wake of the aforesaid, the Suit filed by the plaintiff is decreed. Decree be drawn accordingly.

SMT. BHARATI DANGRE, J