

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.61 OF 2022

AND

CIVIL APPLICATION NO.75 OF 2022

MULLA MUNAF

....APPELLANT

Versus

SHEIKH SHIRAJUDDIN AND

3 ORS.

....RESPONDENTS

Mr S.G. Desai, Senior Advocate with Ms Tejas P. Rane Sardesai, Advocate *for the Appellant.*

Mr S. Karpe with Ms S. Vaigankar, Advocates *for the Respondents.*

CORAM: M. S. SONAK, J.

DATE : 2nd FEBRUARY 2023

ORAL ORDER :

1. Heard Mr S.G. Desai, learned Senior Advocate for the Appellant and Mr S. Karpe, learned Counsel for the respondents.

2. The Appellant was the original defendant in Regular Civil Suit No.63/2014/E instituted by the respondents in the Court of Civil Judge, Junior Division at Margao, seeking eviction of the Appellant. The trial Court decreed the suit on 03.11.2018, and the First Appellate Court dismissed the appeal against the same on 24.10.2019. Hence, this Second Appeal.

3. Mr S.G. Desai, learned Senior Advocate for the Appellant, submits that before the suit was instituted, the respondents - plaintiffs had filed proceedings against the Appellant before the Rent Controller seeking his eviction under the provisions of the Goa Buildings (Lease, Rent & Eviction) Control Act, 1968 (said Act). He submitted that these proceedings were withdrawn, and after that, the suit was instituted by styling the Appellant as a trespasser. Mr Desai presents that the fact that the plaintiffs approached the Rent Controller even after they executed Leave and Licence Agreements dated 01.11.2005 and 11.09.2006 indicates that the plaintiffs were clear in their mind that the Appellant was a tenant. Mr Desai submits that, in any case, the original plaintiffs were estopped from alleging that the Appellant was either a trespasser or only a licensee.

4. Mr Desai submits that Civil Court lacked jurisdiction to entertain such a suit, and even though this point may not have been raised before the Trial Court or the First Appellate Court, since this is a point of law, this appeal should be admitted on the following substantial questions of law:

(a) Are the impugned judgments and decrees void since the civil court had no jurisdiction to entertain the suit after the original plaintiffs had earlier filed and withdrawn proceedings before the Rent Controller under the provisions of the said Act?

(b) Are the two agreements of Leave and Licence dated 01.11.2005 and 11.09.2006 lease agreements or lease

deeds within the meaning of the Transfer of Property Act, 1882?

5. Mr Karpe, learned Counsel for the original plaintiffs, submits that there can be no estoppel against the law. He proposes that the Leave and Licence Agreements are pretty straightforward, and based on the same, there could be no doubt that the Appellant was a mere licensee. After the licence period concluded, the Appellant's status was that of a trespasser, and the Civil Court correctly ordered the Appellant's eviction from the suit premises. He submits that there are concurrent findings which warrant no interference. Finally, he submits that the substantial questions of law now sought to be raised do not arise.

6. The rival contentions now fall for determination.

7. The two Leave and Licence agreements are on record. Considering the clauses of the two Leave and Licence Agreements and the law laid down in *Delta International Limited V/s. Shyam Sundar Ganeriwalla & Ors.*¹, it is evident that the Appellant was a licensee and not a lessee in respect of the suit premises.

8. The two Courts have adequately analysed the Leave and Licence Agreements and the other co-relevant documentary evidence on record to reach a finding that the Appellant was not a lessee but only a licensee. There is no perversity in the record of such finding of fact

¹ (1999) 4 SCC 545

concurrently by the two Courts. The various clauses of the two agreements un-mistakingly show that the Appellant was a mere licensee and not a lessee. Accordingly, no substantial question of law on this issue arises.

9. Mr Karpe pointed out that in response to the proceedings initiated by the original plaintiffs before the Rent Controller, the Appellant took a plea that he was not a tenant in respect of the suit premises but that he was only a licensee. Faced with this predicament, and also when it was realised that the Rent Controller would have no jurisdiction to proceed against a mere licensee that the Appellant was, the proceedings before the Rent Controller were withdrawn, and the Civil Suit was instituted.

10. Apart from the above position, it is well settled that there can be no estoppel against the law. If the contention of estoppel is to be considered, then the Appellant's objection to the proceedings before the Controller would also raise an estoppel against the Appellant. But, since there is no estoppel against the law nor can consent confer jurisdiction on a Court if it is inherently lacking, this matter cannot be decided on the estoppel issue.

11. The Appellant has nowhere disputed the execution of the two Leave and Licence Agreements. The terms and conditions of the Leave and Licence Agreements are clear and convincing. No evidence to

refute such terms consistent with the law laid down in *Delta International Limited* (supra) was brought on record by the Appellant. In such a situation, neither any issue of estoppel nor the issue of jurisdiction of the Civil Court arises in this matter. This is possibly the reason why such issues were not even seriously raised before the two courts.

12. The objection now sought to be raised is not a mere question of law that goes to the root of jurisdiction. At best, it is a mixed question of law and fact. Accordingly, such a question cannot be raised for the first time in a second appeal. But, in the present case, even if the Appellant is permitted to raise such a question, the same will have to be answered against the Appellant for the above reasons.

13. Accordingly, none of the substantial questions of law as proposed arise, or in any case, such questions will have to be answered against the Appellant.

14. This appeal is dismissed without any order for costs for the above reasons. Accordingly, the civil application does not survive the dismissal of the appeal, and the same is also disposed of.

M. S. SONAK, J.