

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.672 OF 2017
WITH
CIVIL APPLICATION NO.1210 OF 2017
IN
SECOND APPEAL NO.672 OF 2017**

Dr. Ramchandra Vishnu Paranjape ...Appellant

Versus

1. Jugalkishor Gupta
2. Sharayu Jugalkishor Gupta ...Respondents

...

Mr. Nitin P. Deshpande for the Appellant.
Mr. Sanjay Kshirsagar for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th NOVEMBER, 2023.

P. C. :-

1. This is an appeal under Section 100 of the CPC filed by the Appellant-Defendant challenging the judgment and order dated 27/03/2017 passed in Civil Appeal No.292 of 2007 whereby the First Appellate Court dismissed the appeal and confirmed the judgment and decree dated 28/02/2007 passed by the learned 2nd Additional Judge, Small Causes Court, Pune, in Special Civil Suit No.38 of 1990.

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2. The Respondents were the Plaintiffs and the Appellant was

the Defendant No.1 in the suit and shall be hereinafter referred to as 'the Plaintiffs' and 'Defendant No.1' respectively.

3. The dispute is in respect of a flat situated on the ground floor of House No.200, Narayan Peth, Pune-30. The said flat shall be hereinafter referred to as 'the suit premises'. The Appellant is the Defendant No.1 and the Respondents are the Plaintiffs in the suit and shall be hereinafter referred to as 'Defendant No.1' and 'Plaintiffs' respectively.

4. The suit premises were owned by late Raghunath Keshav Khadilkar, father of Mrs. Sharayu Jugalkishor Gupta, the Plaintiff No.2. Raghunath Khadilkar had gifted the suit premises to Plaintiff No.2 and her two sisters -Vijaya Ghaisas and Shailaja Pant, who are arrayed as Defendant Nos.2 and 3 in the Suit. The sisters of Plaintiff No.2 transferred their share in favour of Plaintiff No.2. The Plaintiffs therefore were the absolute owners of the suit premises.

5. The mother of Plaintiff No.2 was a medical practitioner and she was running her dispensary in the suit premises. It is stated that father of the Plaintiff No.2 was a union minister hence both the

parents had shifted to Delhi. The mother of Plaintiff No.2 therefore entered into an agreement with Defendant No.1, who is also a doctor by profession, to run the dispensary for a period of five years. Plaintiff No.2 claimed that she was not aware of the said agreement. She learnt about the same only when she was made a party in the previous proceedings filed for fixation of standard rent. The Respondent No.2 claimed that her mother had no right to enter into leave and license agreement in favour of the Appellant-Defendant No.1 and that the agreement was null and void. The Plaintiffs claimed that they are the owners of the suit premises and that they had requested the Defendant No.1 to handover vacant possession of the suit premises. The Defendant No.1 having failed to vacate the suit premises, the Plaintiffs filed the suit for recovery of possession.

6. The Defendant No.1 claimed that he is the tenant in respect of the suit premises. The Defendant No.1 also contended that the civil court had no jurisdiction to try the suit and that the suit ought to have been filed before the Small Causes Court, Pune.

7. The Trial Court framed the issues and upon analysing the evidence adduced by the respective parties held that the Plaintiffs are

the owners of the suit premises and further that the Defendant No.1 is a trespasser. The Trial Court held that the Small Causes Court has no jurisdiction to decide the issue whether a person is a trespasser. The Trial Court therefore decreed the suit and directed the Defendant No.1 to handover vacant possession to the Plaintiffs within two months from the date of the decree. The Defendant No.1 was further directed to pay an amount of Rs.36,000/- towards compensation for his use and occupation of the suit premises. Being aggrieved by the said judgment and decree, the Defendant No.1 preferred an appeal before the first Appellate Court. The Appellate Court has confirmed the findings that the Plaintiffs are the owners of the suit premises and that the Defendant No.1 is a trespasser and further that the Small Causes Court had no jurisdiction to decide the issues involved in the suit.

8. The only challenge raised in this appeal is to the findings rendered on the issue of jurisdiction. Mr. Nitin Deshpande, learned counsel for the Defendant No.1 states that the Civil Court had no jurisdiction to order eviction when the relationship between the parties is that of a landlord and tenant or licensor and a licensee. Such jurisdiction vests with the Court of Small Causes. He submits

that both the courts were clearly in error in answering the issue of jurisdiction.

9. Per contra, Mr. Sanjay Kshirsagar, learned counsel for the Plaintiffs submits that the Small Causes Court has no jurisdiction to decide the issue of title. He has relied upon the decision of ***Ramji Gupta and Anr. vs. Gopi Krishnan Agrawal (dead) and Ors., (2013) 9 SCC 438*** and ***Budhu Mal vs. Mahabir Prasad and Ors. (1988) 4 SCC 194***.

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

11. As noted above, the Plaintiffs had filed a suit for recovery of possession with specific averments that they are the owners of the suit premises and the Defendants are the trespassers.

12. In ***Ramji Gupta*** (supra) the Hon'ble Apex Court has observed as under:-

“16. In ***Nirmal Jeet Singh Hoon vs. Irtiza Hussai (2010) 14 SCC 564*** this Court has held that the Small Cause Court has no right to adjudicate upon the title of the property,

as Section 23 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as “the 1887 Act”) reads:

“23. Return of complaints in suits involving questions of title-

(1)Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a court cannot finally determine, the court may at any stage of the proceedings return the complaint to be presented to a court having jurisdiction to determine the title.

(2) When a court returns a complaint under subsection (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure (14 of 1882) and make such order with respect to costs as it deems just, and the court shall, for the purposes of the Indian Limitation Act, 1877 (15 of 1877) be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.”

Thus it is evident from the above, that the Small Cause Court cannot adjudicate upon the issue of title. In the instant case, therefore, the trial court has rightly refused to go into such issue, and neither can any fault be found with

the findings recorded by the courts below in this regard. Furthermore, as it is an admitted fact that Defendants 1 and 2 were tenants of the original plaintiffs, the question of title could not be adjudicated at the behest of the appellants under any circumstances.”

13. It is well settled that the jurisdiction of a court has to be determined only on the basis of the allegations contained in the plaint. In the instant case, the Plaintiffs have filed a suit for possession alleging that the Defendant No.1 was a trespasser. The Small Causes Court, which is vested with jurisdiction to entertain and try suits or proceedings between landlord and tenant would have no jurisdiction either to decide the title or order eviction of a trespasser. It is also pertinent to note that both the courts below have recorded categorical findings that the Defendant No.1 is a trespasser. In the absence of challenge to these findings, the findings on the issue of jurisdiction cannot be disturbed.

14. Under the circumstances, the appeal does not involve substantial question of law. Hence, the appeal is dismissed.

15. In view of dismissal of the appeal, the interim application does not survive and hence stands disposed of.

16. Learned counsel for the Appellant-Defendant No.1 seeks continuation of stay for a period of six weeks. He makes a statement that the Defendant No.1 shall clear the arrears of Rs.6.59 lakhs within a period of three months. Statement is accepted.

17. Interim relief granted earlier to continue for a further period of six weeks.

(SMT. ANUJA PRABHUDESSAI, J.)