



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 466 OF 2018

Janardhan Raghunath Patil and Anr. ...Appellants.

Versus

Bhikaji Ramchandra Patil ...Respondent.

Mr. S. R. Ganbavale for the appellant.

Mr. P. S. Dani, Senior Advocate along with Mr. S. A. Rajeshirke for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : March 13, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 27th March 2018 passed by the Appellate Court in Regular Civil Appeal No.178 of 2012, partly allowing appeal and directing the defendants to hand over the vacant possession of suit property, the original defendants are before this Court.

2. Regular Civil Suit No.962 of 2012 was preferred by the plaintiff for recovery of possession of suit property. The case of plaintiff is that the defendants are his nephews and the families were residing together. Subsequently, due to dispute, the plaintiff shifted residence to Pachgaon and the suit house was given for the residence of

defendants without any remuneration for temporary period. Adjacent to the suit house is the property bearing CTS No.969 and the defendants shifted their lath machine there and stopped using the suit house. The plaintiff required the suit house for their own requirement and, as such, called upon the defendants for possession of the same. As possession demanded was not given, the suit was filed for possession and compensation.

3. The suit came to be resisted by the defendants contending that the suit house is in the name of plaintiff but defendants are using the same as owner. The father of defendant was given in adoption and defendants are not nephews of the plaintiff. The plaintiff and defendants never resided together. In the year 1984, the father of defendants had constructed a RCC building by spending about Rs.2 lakh and thereafter the defendants purchased CTS No. 969/2. It was contended that the defendants have acquired title by prescription. The defendants filed counter claim seeking declaration of ownership by adverse possession.

4. Vide judgment dated 10th April 2012, the trial Court dismissed the suit and decreed the counter claim of defendants declaring the defendants to be owners by adverse possession. As against this, RCA No. 178 of 2012 was preferred in which the defendants were directed

to hand over vacant possession of the suit property to the plaintiffs.

5. Heard Mr. S. R. Ganbavale, learned counsel appearing for the Appellants and Mr. P. S. Dani, learned Senior Advocate appearing for the respondents.

6. Mr. Ganbavale, learned counsel appearing for the Appellants would submit that plaintiffs have come with the case of gratuitous licence whereas the counter claim sought a declaration of ownership by adverse possession. He would submit that as the case of plaintiff was of gratuitous licensee in the absence of any notice under section 106 of the Transfer of Property Act, 1882, the licence even if gratuitous, could not have been determined and without a notice being issued, suit for possession could not have been filed. He would submit that as the lease was not determined under clauses (a) to (g) of Section 111 of the Transfer of Property Act, 1882, Clause (h) of Section 111 comes in operation and only upon expiration of notice to determine the lease, the lease stands determined.

7. *Per contra* Mr. Dani, learned Senior Advocate appearing for the respondents would point out that the provisions of section 106 of Transfer of Property Act, 1882 will be applicable where there is a lease executed for consideration and in the present case as the requirement

of section 105 of Transfer of Property Act, 1882 has not been satisfied, there is no necessity of notice being issued. He would further submit that as the defendants have failed to show that their possession has become hostile to that of the owner, no suit for adverse possession was maintainable and the defendants were required to hand over possession when demanded.

8. Considered the submissions and perused the record.

9. There is no submission advanced by learned counsel for the Appellant on the aspect of adverse possession and the only contention raised is that in view of Section 106 of Transfer of Property Act, 1882, without any notice being issued to the defendant, the licence which is a gratuitous licence, could not be determined.

10. The submission is flawed as it proceeds on a premise that the appellant was granted a lease in respect of the subject premises. The defendant's case was of adverse possession and not of lease. The ownership of plaintiff is not disputed. The provisions of section 105 of Transfer of Property Act, 1882 will have to be read along with section 106 of Transfer of Property Act, 1882, which reads thus :

"105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid

or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

106. Duration of certain leases in absence of written contract or local usage.—(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months’ notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days’ notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

11. A conjoint reading of the above provisions would indicate that it is only where there is a transfer of the right to enjoy the property in consideration of price paid or promised, that a lease comes into existence. The provisions also define the terms lessor, lessee, premium and rent.

12. In the present case, admittedly there is no lease in existence

between the parties, either by implication or expressly created. The case of plaintiff is very simple that the defendant being his nephew, was occupying the suit property and upon the same being required by plaintiffs, the defendants have been asked to hand over possession. Upon the owner of property seeking to recover possession of property from a person who is not a lessee as defined under section 105 of Transfer of Property Act, 1882, section 106 of Transfer of Property Act, 1882 will have no application. Reliance is placed by learned counsel appearing for the appellant on the decision of Apex Court in ***V. Dhanapal Chettiar v. Yesodai Ammal [(1979) 4 SCC 214]***. That was an appeal at the instance of tenant and in that respect, the Apex Court was considering the provisions of sections 106 and 111 of Transfer of Property Act, 1882. Facts of the present case being clearly distinguishable, the said decision is inapplicable.

13. Having regard to the discussion above, no substantial question of law arises in the present case. Appeal stands dismissed.

14. In view of the disposal of second appeal, civil/interim application(s) taken out in this second appeal, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]