



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.416 OF 2018
WITH
CIVIL APPLICATION NO.965 OF 2018
IN
SECOND APPEAL NO.416 OF 2018

Harichandra Vishram Kumbhar ... Appellant.
Versus
The Government of Maharashtra and Ors. ... Respondents.

Ms. Siddhi Bhosale i/by Mr. Chaitanya Pendse, for the Appellant.
Mr. Sumit Kothari, for Respondent Nos.3 to 5.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : FEBRUARY 09, 2024

P. C.:

1. Being dissatisfied by the judgment dated 17th August, 2017 passed by the Appellate Court in Regular Civil Appeal No.28 of 2016, dismissing the Appeal thereby confirming the judgment and order dated 10th November, 2016, passed by the trial Court in Regular Civil Suit No.48 of 2011, the original-plaintiff is before this Court.

2. Briefly stated the facts of the case are that in respect of structure admeasuring 21 feet in length and 20 feet in width

situated in Gat No.57 at village Narvan, District Ratnagiri, which was allotted Gram Panchayat House No.818, action proposed to be taken by the Respondent nos.1 and 2-Statutory Authorities was sought to be declared as null and void by way of Regular Civil Suit No.48 of 2011. Subsequently, the defendant Nos.3 to 5 came to be impleaded as parties, as they were the owners of the Gat No.57, on which the subject structure was situated. The case of the plaintiff was that the defendant no.3, one of the co-owners had given him permission to construct the structure for the purpose of the plaintiff's business and that permission was given by the Gram Panchayat for the construction for which the plaintiff had incurred expenses of Rs.65,000/- to Rs.70,000/-. It was pleaded that the concerned Gram Panchayat carried out the assessment and the plaintiff also obtained electricity connection and all assessment taxes were being paid to the Gram Panchayat. It was pleaded that in the year 2015, the defendant no.3 obstructed the plaintiff from carrying out the business and notice was sent by the plaintiff to the defendant no.3. It was pleaded that under the provisions of the Gram Panchayat Act for conversion to non-agricultural land,

permission is required and in any event the construction can be regularized by accepting penalty. It was pleaded that on 9th March, 2010, the officers of the defendant no.2 passed an order of penalty which was duly deposited by the plaintiff. It was pleaded that thereafter, notice came to be issued on 14th February, 2011, at the instance of the defendant no.3 for removal of the construction. The case of the plaintiff was that of an irrevocable licensee of the landlord.

3. The suit came to be resisted by the defendants and written statement was filed by the defendant Nos.1 and 2 as well as by the defendant no.3. Defendant no.3 contended that no permission has been given to the plaintiff to carry out the construction by the Defendant No.3 or other co-owners and the Gram Panchayat without any assessment and despite the construction of the cabin being incomplete has allotted house number to the cabin. It was contended that the property was constructed without obtaining NA order for which the penalty was imposed. It was denied that the plaintiff is irrevocable licensee. It was contended that the plaintiff was a trespasser. It was contended

that the construction was not carried out in the year 2000 but in the year 2005. It was contended that the subject construction was not temporary construction but permanent construction using iron channels. Counter claim was filed by the defendant no.3 seeking removal of the subject construction and direction to the plaintiff to handover the vacant possession to the defendant no.3.

4. The parties went to the trial. The trial Court considered the evidence on record and dismissed the suit and decreed the counter claim directing the plaintiff to remove the structure and to handover possession to defendant no.3. As against the judgment of the trial Court, the plaintiff filed Regular Civil Appeal which came to be dismissed by judgment dated 17th August, 2017.

5. Heard Ms. Siddhi Bhosale, learned counsel for the Appellant and Mr. Sumit Kothari, learned counsel for Respondent Nos.3 to 5.

6. Learned counsel appearing for the Appellant submits that the admitted position is that the defendant nos.3 to 5 are the owners of Gat No.57 on which one wooden kiosk has been constructed by the Appellant with the permission of the defendant

no.3, who is the co-owner. She submits that permission was given by the Gram Panchayat to the said construction of wooden cabin and even house number was allotted in which the plaintiff runs a small grocery shop. She submits that as the work of permanent nature was erected with the consent of the owner, the plaintiff became an irrevocable licensee under Section 60 of the Easement Act and as such, the counter claim could not have been decreed directing the plaintiff to handover possession.

7. *Per contra*, learned counsel appearing for the Respondent Nos.3 to 5 would submit that it is not wooden kiosk which has been built on Gat No.57, admittedly owned by the defendant nos.3 to 5 but there is permanent construction raised by erecting steel angles and there is no permission granted by the Gram Panchayat for the said construction. He submits that in the cross-examination of PW-2- the then Village Sarpanch has admitted that there is erasure and insertion in the Gram Panchayat records i.e. in Resolution at Sr.Nos.9 and 10. He submits that no substantial question of law arises.

8. Considered the submissions and perused the record.

9. The Plaintiff had filed the suit challenging the action proposed to be taken by the defendant Nos.1 and 2 seeking to remove the construction. As such, what was required to be established is that necessary permissions have been granted for erection of the construction. For that purpose, the plaintiff had relied upon the permission which is stated to be given by the Gram Panchayat. The Appellate Court has considered that the evidence of witness of the plaintiff PW-2 makes it clear that the plaintiff had not obtained any permission before raising the construction of the suit property. Admittedly, in the trial Court proceedings there is no written permission which is placed on record and the documentary evidence produced by the plaintiff are the applications of permission and not the written permission.

10. The Appellate Court considered the evidence of the plaintiff in which he has admitted that he does not have documents to show that the Gram Panchayat has given permission to wooden kiosk. The Appellate Court considered the evidence of PW-2, perused the original proceeding book of the Gram Panchayat and has held that there are interpolations in the original

proceeding book. Based on the documentary and oral evidence, the Appellate Court has held that the suit property is without permission of the Gram Panchayat. Nothing has been demonstrated to show any perversity in the findings of the trial Court and the Appellate Court on the issue that the construction by the plaintiff was without any permission. It is admitted that no non-agricultural permission was obtained.

11. Coming now to the issue of irrevocable licensee which has been raised in context of the counter claim being decreed, for that purpose, the provisions of Section 60 of the Easement Act will have to be perused, which reads thus:

“60. License when revocable.- A license may be revoked by the grantor, unless-
(a) it is coupled with a transfer of property and such transfer is in force;
(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.”

12. Plain reading of the provisions would indicate that the grantor may revoke license granted unless the licensee acting under the license has executed work of permanent structure and had incurred expenses in the execution.

13. Coming to the facts of the present case, the contention is

that consent was given by the defendant no.3 for construction of a wooden kiosk. For that purpose, the evidence indicates that consent letter on which reliance has been placed is dated 14th February, 2000, in which it appears that the defendant no.3 had given the consent to erect the wooden kiosk. However, what needs to be considered is that this consent has been given of 14th February, 2000 and the evidence clearly indicates that the application for permission to construction which is at Exhibits 65 to 90 are dated 19th January, 2000 and considering the applications for construction of the wooden kiosk being made on 19th January, 2000, it cannot be said that the permission was with the consent of the defendant no.3. That apart, the permission appears to be for construction of wooden kiosk, whereas the construction actually raised by the plaintiff is permanent structure.

14. Considering the evidence which has come on record, it cannot be said that acting under the terms of the license, the plaintiff has erected the work of permanent nature which would classify him as an irrevocable licensee. The evidence which has come on record shows that the defendant nos.3 to 5 are the co-

owners of the Gat no.57 and other co-owners have not granted their consent and even the defendant no.3 has not granted the consent for raising any permanent structure. The counter-claim filed by the defendants was for recovery of possession based on title and considering the facts in the instant case and the evidence which has come on record, the trial Court as well as the Appellate Court has rightly decreed the counter-claim.

15. Having regard to the discussion above, there is no substantial question of law which arises for consideration in the present case. The submissions of learned counsel for the Appellant would require this Court to re-appreciate the evidence which has come on record which is not permissible under Section 100 of the Code of Civil Procedure, 1908.

16. Appeal stands dismissed. In view of the dismissal of the Appeal, Civil Application does not survive for consideration, same stands disposed of.

(Sharmila U. Deshmukh, J.)