



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 673 OF 2017
WITH
CIVIL APPLICATION NO.1198 OF 2017

Bhimrao Baban Salunke

... Appellant.

Versus

Rajaram Dinkarrao Pharate

... Respondent.

*Mr. Abhijit P. Kulkarni a/w. Mr.Gaurav Shahane, Ms.Sweta Shah, and
Mr.Krushna Jaybhay for the Appellant.
Mr. Pranjal M. Khatavkar i/by Mr. Shriram S. Kulkarni, for the Respondent.*

Coram : Sharmila U. Deshmukh, J.

Date : May 06, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 13th January, 2017 passed by the Appellate Court in Regular Civil Appeal No.57 of 2015, dismissing the Appeal thereby upholding the judgment of the Trial Court dated 15th July, 2013 decreeing the suit and dismissing the counter-claim, the original-Defendant is before this Court. For the sake of convenience, the parties are referred to by their original status before the Trial Court.

2. The facts of the case are that Regular Civil Suit No.267 of 2012 was filed seeking recovery of possession and perpetual injunction in respect of land Gat No.45/13. It was contended by the Plaintiff that he is the owner of the said land having purchased the same in the year

2001 and is in possession thereof and when he visited the land on 4th March, 2012, he found that the Defendant has started raising construction over the said land. It was contended that the Defendant is not having any right over the suit property.

3. The suit came to be resisted by the Defendant and it was contended that after purchase of the land by the Plaintiff, the suit property was let out to him and continued as a tenant on monthly rent of Rs.500/-. A counter-claim also came to be filed seeking injunction against his dispossession.

4. The parties went to trial. The Trial Court framed the necessary issues and held that the Defendant has failed to prove that he is in possession of the property as a tenant. The Defendant did not participate in the proceedings and did not lead any evidence and failed to prove his case.

5. As against this, Regular Civil Appeal No.57 of 2015 came to be filed by the Defendant. The Appellate Court re-appreciated the evidence on record and held that the Plaintiff has proved that the Defendant's possession was that of licensee, whereas the Defendant has failed to prove that he is in possession as a tenant and dismissed the Appeal.

6. Heard Mr.Kulkarni, learned counsel appearing for the Appellant and Mr.Khatavkar, learned counsel appearing for the Respondent.

7. Mr.Kulkarni, learned counsel appearing for the Appellant would

submit that the substantial question of law which arises is whether the finding of the Court that the Defendant has failed to prove the mode in which he came into possession of the suit property is perverse in view of the clear admission in the plaint itself that the defendant is in possession of the same as a licensee. He submits that the Trial Court and the Appellate Court has not considered the evidence in the proper perspective and therefore, the finding suffers from perversity.

8. *Per contra*, Mr.Khatavkar, learned counsel appearing for the Respondent would submit that the Defendant has failed to lead any evidence and has failed to prove that he is in possession of the suit plot as a tenant and in absence thereof, the Appellate Court has rightly appreciated the evidence. This Court is informed that the decree has already been executed and the possession has already been handed over.

9. Considered the submissions and perused the record.

10. As there was a specific case of the Defendant that he is in possession of the property in the capacity as tenant the burden was upon the Defendant to prove the same. Admittedly, the Defendant did not step into the witness box and did not lead any evidence and therefore, presumption under Section 114 of the Indian Evidence Act, 1872 is required to be drawn that the case set up by him is incorrect. As the Defendant claimed to be in possession, the burden was upon him to show his right to be in possession of the property. The claim

was that of tenancy which the Defendant has failed to prove. In the case of ***Maria Margarida Sequeria Fernandes and Ors. vs. Erasmo Jack de Sequeria (dead) through L.Rs. [AIR 2012 SC 1727]***, the Apex Court in para 70, laid down that the person who claims possession has to give following details, as under:

“70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) who is or are the owner or owners of the property;
- (b) title of the the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license free or lease amount;
- (h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;
- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.”

11. In view of the settled position of law as laid down by the Appellate Court, if the facts of the present case are considered, the

Defendant has failed to prove any of the facts which are required to be proved for protecting the possession as tenant. The Appellate Court on the basis of appreciation of evidence has held that the Defendant is not having any title to the suit plot and have also not shown that he is the tenant of the plaintiff. The Appellate Court has therefore negated the issue of the Defendant's possession in the suit property as tenant. Considering the fact that the property was open plot of land and therefore, the provisions of Transfer of Property Act, 1882 would apply, the Appellate Court has rightly upheld the findings of the Trial Court decreeing the suit.

12. Upon consideration of the judgment of the Appellate Court which is the final fact finding Court, there is no perversity which is demonstrated from the record. As such, no substantial question of law arises in the present appeal, Second Appeal stands dismissed.

13. In view of the dismissal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]