

(2015) 11 BOM CK 0042

In the Bombay High Court

Case No : Notice of Motion No. 3139 of 2010 in Suit No. 886 of 2010 and Suit No. 886 of 2010

Kirti Sohan Modi and Others

APPELLANT

Vs

Creation

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Easements Act, 1882 — Section 62, 63
Presidency Small Cause Courts Act, 1882 — Section 41

Citation : (2015) 11 BOM CK 0042

Hon'ble Judges : S.C. Gupte, J.

Bench : Single Bench

Advocate : M.B. Singh and Pooja Jalan i/b. MBS and Co., for the Appellant;
Vatsal Shah i/b. S.T. Manek and Co., for the Respondent

Judgement

S.C. Gupte, J.—This suit seeks an order of permanent injunction against the Defendant restraining it from entering upon the terraces of the Plaintiffs' buildings and a mandatory order and injunction directing the Defendant to remove the hoardings as well as of its belongings from the terraces of the buildings and to cease to occupy the premises. The Plaintiffs also seek compensation or damages for use of the suit premises by the Defendant between 1 April 2007 to the date of the suit and thereafter till the time the Defendant removes itself from the suit premises. It is the Plaintiffs' case that the Defendant was granted licence to use the premises for display of advertisements on hoardings under an agreement for licence reserving a monthly compensation payable for such user. It is the Plaintiffs' case that the agreement, which was renewed from time to time, finally expired on 31 March 2007 by efflux of time and also by termination notice issued in that behalf on 10 March 2007; and that after expiry of the licence, the Defendant has become a trespasser in respect of the suit property. It is, accordingly, claimed that the suit is between the owners of the property (Plaintiffs as trustees of Bhaidas Maganlal Charity Trust) and a trespasser (Defendant, who was a former licensee). At the hearing of the Notice

of Motion, the Defendant objected to the jurisdiction of this Court to entertain and try the present suit. It is the case of the Defendant that the suit is between a licensor and a licensee for recovery of possession as well as licence fee and that such suit lies within the exclusive jurisdiction of the Courts of Small Causes under the provisions of Section 41 of the Presidency Small Causes Courts Act. By an order passed by this Court on 2 March 2015, this Court framed a preliminary issue of jurisdiction under Section 9A of the Code of Civil Procedure, 1908 in this behalf. Both the parties have chosen not to lead any oral evidence in the matter. Learned Counsel made oral submissions on the preliminary issue. This order finally determines the preliminary issue.

2. The Plaintiffs have relied upon an agreement dated 8 September 1989, between the Plaintiffs and the Defendant. By this agreement, the predecessor-in-title of the Plaintiffs - Chandaben Bhaidas, who was the owner of the suit premises and created a trust in respect of the suit premises, as the trustees of which the Plaintiffs claim ownership of the suit premises, permitted the Defendant to erect and display advertisements on a steel structure and Hoardings/Neon Signs by making use of the two terraces on the suit buildings. The agreement was initially for a period of one year and provided for a monthly licence fee or compensation of Rs. 15,000/-. The agreement was renewed from time to time. By an agreement dated 26 September 1996, between the trustees of Bhaidas Maganlal Charity Trust (trust created by the deceased Chandaben Bhaidas under her last will and testament, which was duly probated by this Court) extended the agreement of licence for a further period ending on 31 March 1999. The licence period was further extended finally by a letter dated 29 August 2001 upto 31 March 2007. By their Advocate's letter dated 10 March 2007, the Plaintiffs terminated/cancelled the agreement, calling upon the Defendant to remove its belongings, including its servants, agents and hoarding signs within three weeks from the receipt of the letter or by 31 March 2007, whichever is later, making it clear that the Plaintiffs did not wish to extend the agreement any further after its expiration. It is the Plaintiffs' case that, despite termination of the agreement, the Defendant, who is nothing but a trespasser of the property after termination of the licence, has continued to illegally occupy and use the suit premises for display of advertisements. It is the Plaintiffs' case that, after expiry of the period of licence, the Defendant has no right whatsoever to remain in the suit premises. Accordingly, the Plaintiffs have prayed for a permanent injunction restraining the Defendant from entering upon the terraces of the building and also a direction and order to the Defendant to remove the hoardings and all its belongings from the terraces of the suit buildings and cease to occupy the suit premises forthwith. The Plaintiffs have also prayed for a decree for a sum of Rs. 1,27,88,182/- as arrears of compensation/damages towards use of the premises for the period from 1 April 2007 to upto the date of the suit. It is the Defendant's case in the written statement that the Defendant is a tenant in respect of the suit premises or alternatively a licensee holding an irrevocable licence in respect of the suit premises. It is submitted that the suit

premises consist of a suit site or area of about 1200 sq. ft. with permanent irremovable structures erected by the tenant/licensee at its own cost in or about 1989-1990. The Defendant denies that the licence was for any fixed period of time or it expired on 31 March 2007.

3. Going by the Plaintiffs' own averments in the present suit, the Defendant is admittedly a licensee in respect of the suit premises for display of hoardings. What is, however, the Plaintiffs' case is that this licence has been terminated by the Plaintiffs and, after termination of the licence, the Defendant occupies the suit premises, using them as a trespasser. The question is whether, on these facts, the suit is between a licensor and licensee for recovery of possession of immovable property or licence fees. Section 41 of the Presidency Small Causes Courts Act, 1882 provides that the Courts of Small Causes alone shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee relating to recovery of possession of any property situated in Greater Bombay or recovery of any licence fee or charges in respect thereof. Learned Counsel for the Plaintiffs submits that a former licensee, whose status after termination of the licence has become that of a trespasser, is not covered by the expression "licensee" used in Section 41. He relies upon the judgments of the Full Bench of our Court in *Central Warehousing Corporation Vs. Fortpoint Automotive Pvt. Ltd.*, and judgments of the Supreme Court in the case of *Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others*, , *D.H. Maniar and Others Vs. Waman Laxman Kudav*, as also of a learned Single Judge of our Court in the case of *Shri Kantilal Somabhai Kothari Vs. Shri Udayvare Raghavendra Acharya and Others*, and a judgment of Jammu & Kashmir High Court in the case of *Beant Singh Vs. Cantonment Executive Officer*--> in support of his submissions.

4. Learned Counsel for the Defendant, on the other hand, submits that all suits between licensors and licensees, who hold such relationship till its alleged termination, are covered by Section 41 of the Presidency Small Causes Courts Act and recovery of possession or recovery of licence fee in respect of the premises fall within the exclusive jurisdiction of the Courts of Small Causes. He relies on the judgment of a Division Bench of our Court in the cases of *Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel*, .

5. As held by our Court in the case of *Nagin Mansukhlal Dagli (supra)*, a suit for recovery of immovable property held by the licensee as well as for recovery of licence fee or charges may very well lie under Section 41 after such licence has come to an end; it is nonetheless a suit between a licensor and a licensee; and the argument that Section 41 must be confined only to suits where the licence has not been terminated earlier by the licensor, is fallacious. The expression "licensees" used in Section 41 of the Presidency Small Causes Courts Act not only includes licensees whose licence is subsisting but also licensees whose licence has been terminated by the licensor prior to the filing of the suit. After the decision of the Division Bench in the case of *Nagin Mansukhlal Dagli*, the

argument that the suit for recovery of possession could be filed by a licensor against a licensee only in a case where the relationship of licensor and licensee subsists as on the date of the suit, is no more *res integra*.

6. Learned Counsel for the Plaintiffs, relying on a Full Bench decision of our Court in the case of Central Warehousing Corporation (*supra*) submits that a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute a suit for recovery of possession in an ordinary civil court only. Subsistence is drawn by the Full Bench in that case from a judgment in the case of Natraj Studios (P) Ltd. Vs. Navrang Studios and another, . That decision was on the basis of Section 28 of the Bombay Rent Act, 1947, under which, the Courts of Small Causes had exclusive jurisdiction to resolve disputes between parties, who had a relationship of landlord and tenant. The observations in that judgment that a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to file a suit in an ordinary civil court were in the context of a plea that the defendant's possession from the outset was only that of a trespasser and not that of an ex-tenant, who has become a trespasser upon termination of the tenancy. The cases of D.H. Maniar, Kantilal Somabhai Kothari and Beant Singh, which deal with the cases of a licensee, who either claims to have become a deemed tenant under the Rent Act or claims reliefs under Sections 62 and 63 of the Easements Act, are cases where the licensees were claiming benefits of various provisions of law on the basis of a subsisting licence. The Courts came to the conclusion that the licences had come to an end and the licensees were thereafter mere trespassers and had no right to claim on the basis of a subsisting licence. These cases have nothing to do with the Plaintiffs' plea in the present case that the Plaintiffs are entitled to recover possession of the licensed premises from a licensee after termination of the licence. Such a case is squarely covered by the decision of our Court in the case of Nagin Mansukhlal Dagli (*supra*).

7. Accordingly, on the averments made in the plaint itself, it is clear that the present suit is between a licensor and a licensee and it relates to recovery of possession of premises which are the subject matter of licence and also for recovery of licence fee. This suit is exclusively within the jurisdiction of the Courts of Small Causes under Section 41 of the Presidency Small Causes Courts Act. The preliminary issue is, accordingly, answered against the Plaintiffs. The suit is, accordingly, dismissed for want of jurisdiction. Having regard to the disposal of the suit, the Notice of Motion does not survive and the same is also dismissed.

8. On the application of learned Counsel for the Plaintiffs, the operation of this order is stayed for a period of eight weeks from today.

9. Under an order passed by this Court on 2 March 2015, this Court has recorded the Defendant's no objection to the Plaintiffs withdrawing a sum of Rs. 30,000/- per month from the amount deposited by the Defendant in S.C. Suit No. 8 of 2007. The Defendant has no objection if this withdrawal continues until further

orders in that suit.