

(2013) 10 BOM CK 0118

In the Bombay High Court

Case No : Appeal From Order No. 710 of 2010 with Civil Application No. 1628 of 2011 in Appeal From Order No. 710 of 2010

Manohar Sahadev Shinde

APPELLANT

Vs

Yashwant Sahadev Shinde

RESPONDENT

Date of Decision : 15-10-2013

Acts Referred:

Citation : (2014) 3 ALLMR 314 : (2014) 4 MhLj 52

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Sachin J. Kadam, for the Appellant;

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Heard finally. The present Appeal from Order is filed by the Appellant-original Plaintiff, as the learned Judge of the City Civil Court, Mumbai by order dated 10 September 2009, returned the plaint to the plaintiff, to file the same before the proper Court. This is on a foundation of preliminary issue that the Court has no jurisdiction to entertain and/or try the Suit.

2. Admittedly, the Plaintiff is residing in the premises owned by the father along with his brother. The Suit is filed to evict the Defendant-brother. The Civil Court is the only remedy/forum to take such action. The Plaintiff prayed to declare that the Defendant has no right, title or interest in the property and also prayed for mandatory injunction for eviction, apart from the permanent injunction from disturbing the Plaintiff's possession, occupation and enjoyment of the Suit property. These prayers and the contents/averments made in the Suit, in my view, also show that there exists no relationship of landlord and tenant and/or licensor or licensee, which are basic elements for invoking the jurisdiction u/s 41 of the Presidency Small Cause Courts Act, 1882 (for short, "the Small Cause Courts Act").

3. The learned Judge, in my view, committed an error in extending the definition

of licensee to this extent, whereby the person who is in possession of the premises the son and/or the legal heirs of the owner of the property and thereby returning the plaint to present the same in an appropriate forum for getting the eviction order/decreed. This, in the present facts and circumstances, is impermissible. I am inclined to observe that the term "licensee" even as contemplated under the Indian Easement Act and/or under the Rent/Small Cause Courts Act, has no way extended to cover the dispute between the two heirs who are occupying the premises as a member of the family. There is no question to declare the occupation as a licensee. By birth, such person even cannot be treated as a licensee and/or in any other such capacity. A son or a daughter gets into a family by birth and resides with the parents, such residence and/or permission to reside in the premises, in no way can be treated to be a relationship which falls within the ambit of Section 41 /45 of the Small Cause Courts Act. The learned Judge, completely overlooked this relationship and by relying on the cases between the licensor and licensee and/or even gratuitous licensee, extended the proviso of Small Cause Court Act and pass the impugned order.

4. Therefore, in view of the above legal position, which is also discussed and settled in *Conrad Dias of Bombay Vs. Joseph Dias of Bombay*, , the case is made out by the Appellant to interfere with the order so passed. The order, therefore, liable to be quashed and set aside.

5. In a similar type of dispute between the family members/heirs of the deceased tenant, I have held that such suit is maintainable in Civil Court. (*Arun Bhaskar Adarkar Vs. Mrs. Mina Srinivasan Krishnan and Srinivasan Krishnan*,) The relevant observations are as under:-

11The Suit is not between the landlord and tenant/licensor or licensee. The same is not initiated by the landlord. The landlord is not a party to this proceeding, initiated by the heirs of the deceased tenant to protect their respective rights and the possession. It nowhere related to the recovery of rent or possession of the tenanted premises.

12 This Suit is not barred by the provisions of the Maharashtra Rent Control Act, 1999.

13 The Suit, as filed in this Court, is maintainable. The issue is answered accordingly. Place the Notice of Motion before regular Bench for hearing on merits.

Resultantly, the following order:-

ORDER

(a) Impugned order dated 10 September 2009 is quashed and set aside.

b) The Appeal from order is allowed.

c) The learned Judge to proceed with the Suit in accordance with law.

- d) The Civil Application is also disposed of accordingly.
- e) There shall be no order as to costs.