

(1963) 07 BOM CK 0014
In the Bombay High Court
Case No : First Appeal No. 673 of 1961

Miss Aninha D'costa

APPELLANT

Vs

Smt. Parvatibai M. Thakur

RESPONDENT

Date of Decision : 29-07-1963

Acts Referred:

Citation : (1964) 66 BOMLR 744

Hon'ble Judges : Naik, J

Bench : Single Bench

Judgement

Naik, J.—The suit giving rise to this appeal was filed by the plaintiff against the defendant for the following reliefs:

- (1) That the defendant be directed by a mandatory injunction to remove herself and her belongings and her agents and servants from suit premises.
- (2) That the defendant be ordered and decreed by an injunction restraining her agents and servants to enter upon and remain on the suit premises.
- (3) That the defendant be ordered to pay compensation at the rate of Rs. 235 p.m.

The plaintiff alleged that the premises, which she had taken on ownership basis, were given to the defendant on November 15, 1959, on leave and licence basis and that the plaintiff had revoked the licence. The defendant resisted the suit on several grounds. She contended that, in the first place, no suit for mandatory injunction would lie and it was incumbent on the part of the plaintiff to have asked for actual possession. Secondly, she contended that since the relationship between the parties is one of landlord and tenant, the City Civil Court had no jurisdiction to entertain and try the suit and the suit ought to have been filed before the Presidency Small Causes Court, which is the Court of exclusive jurisdiction. Finally, she contended that the agreement on which the premises were given to her was of tenancy and not of leave and licence.

2. The trial Court held that the agreement between the parties created the relationship of leave and licence and not of tenancy. It further held that the suit for mandatory injunction would be tenable in view of the fact that the licence creates a personal privilege and there is no right in respect of the property created by the agreement. In consequence, the Court came to the conclusion that the City Civil Court had jurisdiction to try and decide the suit. Consequently, it decreed the plaintiff's suit. It is against that judgment that the plaintiff has preferred the present appeal.

3. Mr. Patel, for the appellant, raised a preliminary point contending that in effect a suit for mandatory injunction is a suit for possession and that being the case, the relief will have to be valued for the purpose of court-fee and jurisdiction at the market value, and if the market value of the property is taken into account, the City Civil Court will not have jurisdiction to try the suit. This point was not raised in the trial Court. But the point has been raised in view of a decision recently given by a Division Bench of this Court comprising Mr. Justice Patel and Mr. Justice Shah in *Lakhiram Ramdas Vs. Vidyut Cable and Rubber Industries*, and also the decision given by the same Bench in *S. Sohansingh Chhadda v. Jitkaur* (1963) Letters Patent Appeal No. 13 of 1963. In *Lakhiram v. Vidyut etc. Industries* after discussing the effect of the decisions of this Court in *Bai Shirinbai Rahim v. Narayandas* (1952) 55 Bom. L.R. 481 (Single Judge), *Burjor Pestonji v. Nariman Minoo* (1952) 55 Bom. L.R. 418 (Division Bench) and *Radhabai Vasudeo v. Nandlal* (1956) 59 Bom. L.R. 127 the Court took the view that it is not open to the plaintiff to file a suit for the relief of mandatory injunction, when the licence has been revoked and the defendant continues in the premises as a trespasser. The learned Judges further held that it is open to the Court to construe the relief of mandatory injunction as a relief for possession and on that basis to call upon the plaintiff to put a correct valuation both for the purposes of court-fee and jurisdiction. This view is binding on me and I respectfully follow the same. The valuation for the purposes of court-fee and jurisdiction would be the market value of the property. Such valuation has to be arrived at in case of dispute by following the procedure laid down in Sections 8, 9 and 10 of the Bombay Court-fees Act. In *S. Sohansingh Chhadda v. Jitkaur* the learned Judges, after stating that the market value of the property is to be taken as the value for purposes of jurisdiction and court-fee, stated that it would be desirable to compute the market value on the basis of twelve and a half years' occupation charges charged by the plaintiff. Mr. Patel contended that the rule laid down by the Division Bench in the Letters Patent Appeal is binding in all cases and, therefore, the valuation of the suit property should also be arrived at by following the method suggested in the judgment. It is true that in the case under consideration, the learned Judges did arrive at the market value by following the rule of twelve-and-half years' occupation charges. I do not, however, think that the learned Judges intended to lay down a rule of thumb to be applied in all such cases. Such a rule, may, perhaps, be followed in cases where there is no evidence regarding the market value or in cases where there is no other means

of ascertaining the market value. Section 8 of the Court-fees Act lays down that the correct valuation of the property is to be arrived at in all cases, where the suit has been wrongly valued by the plaintiff and for that purpose the Court may hold an inquiry into the matter. Sections 9 and 10 of the Bombay Court-fees Act provide the mode and the manner in which the inquiry is to be conducted for arriving at the market value of the property in question. I do not think that the learned Judges intended to lay down a rule, which will have the effect of superseding the provisions of the statute.

4. Mr. Lulla, for the respondent, conceded that in view of the decision of the Division Bench in the two cases cited above, it would be open to the Court to construe the mandatory injunction as a relief for possession. He also conceded that it was necessary to arrive at the correct valuation of the claim for possession for the purposes of court-fee as also jurisdiction. He, however, argued that in this case, there is ample evidence to show what was the correct value of the property in suit. In this connection, he pointed out that the premises were purchased by the plaintiff for Rs. 10,000 in about 1954. He then referred to the evidence of broker Mirani, who stated that the plaintiff approached him for help in disposing of the suit premises and she quoted the figure of Rs. 15,000 as the price of the suit premises. This statement was elicited from the witness in his cross-examination. In answer to questions in cross-examination, the plaintiff stated:

The defendant used to tell me that if I wanted to sell the suit premises, she would buy them. I told the defendant that I was prepared to sell to the defendant for Ra. 15,000/-. The defendant agreed to buy the suit premises for Rs. 15,000/-.... No agreement ultimately resulted as the defendant was not in a position to pay the sum of Rs. 15,000/- immediately. The defendant offered to pay Rs. 8,000/- immediately and Rs. 7,0000/- later on, I was agreeable to this offer, but the defendant did not pay Rs. 8,000/- and gave me a notice sometime thereafter.

This part of the plaintiff's evidence finds corroboration from the admissions made by the defendant saying that the plaintiff had told her that either she should purchase the premises or should hand over the possession thereof. Mr. Lulla made an open offer saying that his client was still prepared to sell the suit property upto a sum of Rs. 24,000 to the defendant or to anyone else. He put the figure of Rs. 24,000 with a view to demonstrate that, in any case, the value of the suit property is below Rs. 25,000, which is the limit of pecuniary jurisdiction of the City Civil Court. There is a further difficulty in applying the rule laid down by the Division Bench in the Letters Patent Appeal for arriving at the valuation of the suit property and it is this that, in the case which was considered by the Division Bench, a sum of Rs. 22 was charged for the occupation of the premises. In the present case, however, a sum of Rs. 235 is charged not merely for the use and occupation of the premises but also for the use of the furniture, which belonged to the plaintiff. Mr. Lulla contended that the rent for furniture itself would be about Rs. 75, in which case, lie pointed out that, even if the rule

laid down by the Division Bench is adopted, the value of the property would be less than the pecuniary limit of the jurisdiction of the City Civil Court. In view of the evidence that is already on record, which clearly shows that in any case, the jurisdiction of the City Civil Court is not ousted, I am inclined to the view that it is not necessary to hold an inquiry into the valuation of the claim for possession in the suit. Mr. Lulla was prepared to pay the court-fee on the valuation of Rs. 15,000, which, according to him, was the correct value at the time of the suit on the basis of the offer made by the plaintiff to the defendant.

5. The rest of the judgment is not necessary for this report.