
(2008) 10 BOM CK 0125

In the Bombay High Court

Case No : Second Appeal No. 298/299 of 2008

Shri Dnyaneshwar Ranganath Bhandare and another APPELLANT
Vs

Shri Sadhu Dadu Shettigar (Shetty) and another
 Shri RESPONDENT
Dnyaneshwar Ranganath Bhandare Vs Shri Sadhu Dadu
Shettigar (Shetty)

Date of Decision : 07-10-2008

Acts Referred:

Citation : (2008) 10 BOM CK 0125

Hon'ble Judges : R.V. More, J

Bench : Single Bench

Advocate : R.S. Apte and Mr. Ashutosh Gole, for the Appellant;

Final Decision : Dismissed

Judgement

R.V. More, J.—Heard Mr. Gole, learned counsel for the appellants in both the appeals.

2. The appellant is the original plaintiff in RCS No. 278/1993 and defendant in RCS No. 114/1993. Mr. Sadhu, the respondent, filed the RCS No.114/ 1993 for injunction simpliciter. RCS No. 278/1993 was filed for possession of the suit property by the appellant against the respondent Sadhu and Chhaya.

3. It was the case of the appellant that Chhaya was a maid servant appointed to look after their grandmother and she was given possession of one of the rooms. Thus the appellant claimed that the respondent-Chhaya was gratuitous licence and therefore, possession was claimed, as stated above, by filing the RCS No. 278 of 1993.

4. The respondent on the contrary claimed tenancy of the suit premises.

5. The trial court decreed the appellants' suit being RCS No. 278/1993. The trial court also decreed the RCS Suit no.114/1993 and directed the defendant therein not to dispose the plaintiffs without due process of law. The respondent -

Smt.Chhaya and Sadhu filed the regular civil appeal no. 180/2002 and Mr. Sadhu filed regular appeal no. 198/2002. Both the appeals were disposed of by a common judgment, thereby allowing both the appeals. The appellant's suit No. 278/903 consequently came to be dismissed and regular city suit No.114/1993 filed by Sadhu came to be decreed.

6. The lower appellate court in para 25 of the impugned judgment and order observed that the case of appellants that the respondents are gratuitous licence is not believable, acceptable and probable for the following reasons :

i. Exh. 62 an assessment register extract of the property no. 289/424 revealed the name of Sadhu and one Rangnath G. Bhandare entered in the ownership column and one Bhanudas Keshav Waghmode is in occupation for the year 1988-89 to 1991-1992 and the rental value is shown as Rs. 2280/-.

ii. Voters list at Exh. 74 for the year 1991 reveals the name of Sadhu and Chhaya as husband and wife.

iii. Exh. 63 a receipt dated 28.04.1997 for the year 1996-97 and 1997-98 under which the amount of Rs.675/- was deposited by the appellant Sadhu in the name of Rangnath Bhandare.

iv. Exh. 67, a receipt dated 31.03.1990 for the taxes of house no. 289 for the year 1989-90 and the amount was deposited by Sadhu in the name of R.G. Bhandare.

v. Exh. 64, 65, 66 are the counterfoils of the Bank of Karad dated 19.08.1988, 20.11.1991 and 14.03.1989, showing the deposit of an amount of Rs.300, Rs.60 and Rs.360/- respectively in the name of the respondent No. 1.

7. On the basis of the above documentary evidence, the lower appellate court concluded that the appellant could not prove his case about gratuitous licensee and consequently, his suit came to be dismissed and the suit of the respondent Sadhu came to be decreed.

8. I find no error in the approach adopted by the lower appellate court. Both second appeals do not involve any question of law much less substantial question of law.

9. In this view of the matter, therefore, both the second appeals are hereby dismissed.