

(2017) 01 BOM CK 0133
In the Bombay High Court
Case No : 107 of 2015

Sitaram s/o Punjaram Borkiar

APPELLANT

Vs

Smt. Leelabai Rambhau Borikar

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Presidency Small Causes Courts Act, 1882, Section 41, Section 26 - Summons against person occupying property without leave - Compensation payable by plaintiff to defendant in certain cases

Citation : (2017) 01 BOM CK 0133

Hon'ble Judges : R. K. Deshpande

Bench : SINGLE BENCH

Advocate : Indranil Damle, A.S.Dhore

Final Decision : Allowed

Judgement

1. On 24.02.2015, this Court passed the order as under;

One of the contentions urged is that when it was the case of the plaintiff that the defendant was occupying the suit property as a permissive licensee, the civil Court had no jurisdiction to try the suit. The reliance is placed on decision of the Supreme Court in Prabhudas Damodar Kotecha & Ors. Vs. Manhabala Jeram Damodar & Anr. 2013 (10) SCALE 242.

Issue notice to the respondent on the following substantial question of law :

" Whether on the pleadings of the plaintiff herself that the defendant was occupying the premises as a permissive licensee, the jurisdiction of the civil Court was ousted ? "

Notice returnable on 01/04/2015. Humdast granted.

C.A.No.165 of 2015

Issue notice to the respondent, returnable on 01/04/2015, Till the returnable

date, possession of the appellant shall stand protected"

2. Admit on the aforesaid substantial question of law. Shir Dhore, the learned counsel appearing for respondent No.1 waives service of notice.

Heard finally by consent of the learned counsels appearing for the parties.

3. Shri Damle, the learned counsel appearing for the appellantdefendant makes a statement after taking instructions that the appellantdefendant does not want to claim coownership in respect of the suit property and accepts the ownership of the plaintiff in respect of the suit property. He submits that the suit was for eviction and possession from the gratuitous licensee in respect of suit property and should have been, therefore, filed in the Court of Small Causes. The jurisdiction of regular civil Court in respect of the matters arising out of the licensor and licensee is ousted. Reliance is placed upon the decision of the Apex Court in the case of Prabhudas Damodar Kotecha and ors vrs. Manhabala Jeram Damodar and anr, reported in 2013(10) SCALE 242. The Apex Court has held that a suit by a licensor against a gratuitous licensee is tenable before the Presidency Small Causes Court under Section 41 of the Presidency Small Causes Courts Act, 1882. In view of this, the jurisdiction of the Civil Court to try such a suit was clearly ousted and the decree passed by the Courts below is required to be set aside.

4. In view of above, the second appeal is allowed. The judgment and decree passed on 16.07.2011 by the learned 5th Joint Civil Judge, Junior Division, Nagpur, in Regular Civil Suit No. 698 of 2006 is hereby quashed and set aside along with the judgment and order dated 24.11.2014 passed by the learned District Judge3, Nagpur, in Regular Civil Appeal No. 474 of 2011. The Regular Civil Suit No. 698 of 2006 filed by the plaintiff is dismissed as being barred by the provisions of Section 26 of the Provincial Small Causes Courts Act. The plaintiff is at liberty to file a suit in the Court of competent jurisdiction which shall be tried and decided in accordance with law. The appellantdefendant is, however, estopped from raising a question of his own title in suit property on the basis of the statement made before this Court.