
(2007) 06 BOM CK 0106

In the Bombay High Court

Case No : First Appeal No. 1192 of 2006

Suhani Shivram Dhuri

APPELLANT

Vs

Maharashtra Housing and Area Development Authority

RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Citation : (2007) 4 ALLMR 695 : (2007) 6 BomCR 638 : (2007) 5 MhLj 250

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : A.M. Saraogi and S.K. Chaurasia, for the Appellant; G.P. Mulekar, AGP, M.V. Jayakar, Adv, for the Respondent

Final Decision : Dismissed

Judgement

Roshan Dalvi, J.—The appellant-plaintiff has challenged the judgment and decree passed by the Bombay City Civil Court dismissing the plaintiff's Suit, discharging the Court Receiver, who was appointed, pending the Suit and directing the Court Receiver to hand over possession of the suit premises to the Maharashtra Housing and Area Development Board (MHADA), who are the first defendants in that Suit. The compilation of the entire record of the trial Court has been placed before the Court, including the oral and documentary evidence. Hence, this Appeal is being disposed of at the admission stage itself.

2. The suit was for protecting the plaintiffs possession in the suit premises which is a room of MHADA bearing Flat No. A-503 in Sat Aasara Co-operative Housing Society, which is constructed by MHADA.

3. The plaintiff desires to protect her possession in respect of the suit premises. She must, therefore, essentially show possession of the suit premises. The plaintiff relied on a letter/pavati, stated to be issued by MHADA under No. 642 dated 14-12-1999 in respect of the suit premises being Flat No. A-503. The plaintiff relied upon two rent receipts stated to be issued by MHADA. The plaintiff also relied upon a Deed of Assignment executed by one Shantaram Jadhav and

the plaintiff under an sufficiently stamped, unregistered but notarised agreement and a Power of Attorney issued by the said Jadhav in her favour. The plaintiff further relied upon, a copy of her own letter dated 21-3-2001, which is stated to be sent to MHADA and received by MHADA by hand delivery as reflected in the stamp, initial and date.

4. Upon such documentary evidence, the plaintiff sought to show her "possession" in respect of the suit premises. MHADA challenged each of these documents. It has been the case of MHADA that none of the documents shown to be of MHADA, were issued by MHADA and they were false and bogus documents. MHADA further contended that no allotment of the suit flat was made to Shantaram Jadhav and how he could agree to assign the suit flat to the plaintiff is not shown.

5. Interestingly, the plaintiff never showed a single independent document, aside from the aforesaid documents, to evince her possession for about three years prior to the suit that she claimed to be residing in the suit premises. The plaintiff never produced a single electricity bill which would show her actual residence in the suit premises and the electricity consumed. She never produced the ration card, which would show the rations drawn by her. She never produced any election card, which would show her possession in the suit premises. Under these circumstances, the challenge to MHADA documents would be required to be seen.

6. The parties led oral and documentary evidence before the Court. The main issue for grant of relief sought by the plaintiff was whether she proved her possession because only after the actual possession is proved, can the Court issue an injunction against any defendants protecting the plaintiffs possession i.e. protecting the plaintiff against dispossession.

7. The plaintiff examined her Constituted Attorney, who, inter alia, deposed in his cross-examination that the plaintiff has not obtained any permission from MHADA to enter into any transaction with Shantaram Jadhav and that besides the aforesaid documents, the plaintiff had no other documents or correspondence from MHADA.

8. MHADA examined one of the officers. The affidavit of examination in chief of the witness of MHADA does not show only a bare case that the plaintiffs documents are false and bogus. The witness has shown how they are false and bogus. The initial pavati/letter dated 14-12-1999 relied upon by the plaintiff in the suit bearing No. 642 is stated to be issued by MHADA. MHADA produced the outward register, showing Sr. No. 642. The entry is shown to be kept in the normal course of the conduct and business of MHADA. It shows a letter issued to a completely different party. Consequently, rather than the plaintiff proving the issue of the letter, by leading evidence of the signatory of the letter /pavati MHADA, as the defendants, have disproved that letter.

9. The rent receipts are also not proved by the plaintiff by leading evidence of the signatory thereto. Instead the witness of MHADA deposed that no such rent

receipts were issued by MHADA in 1999. These rent receipts are in English. They bear the title of Bombay Housing and Area Development Board (BHADB). The witness has produced two rent receipts bearing Nos. 90751 and 90752 as the kind of rent receipts issued by MHADA in 1999. Those rent receipts are in Marathi. Though the Board is a part of MHADA, it is for MHADA itself to issue rent receipts of their premises, which are allotted in the newly constructed building by MHADA to any party. Hence, the rent receipts issued by BHADB are shown not to be issued by MHADA, who are the owners of the premises.

10. Consequently, the copy of the plaintiffs letter dated 21-3-2001 sent to MHADA has no consequence. Any letter written to MHADA and delivered at its office is bound to be accepted by the Receiving Clerk. Hence, it does not matter that the plaintiff obtained a rubber stamp of MHADA thereon. The initial pavati/ letter not having been issued to the plaintiff as per the seminal case, possession from a lawful authority as claimed by the plaintiff, is not shown at all.

11. The oral evidence of the MHADA officer shows that the suit flat could not have been allotted to the plaintiff since it was sealed and then sold to another party on 25-5-2001 upon consideration.

12. The juridical possession of the plaintiff is, therefore, not seen. The action in law against MHADA, who are the admitted owners of the suit property, therefore, cannot be sustained. The actual possession of the property even upon the plaintiff coming into possession by way of trespass and getting into settled possession under such trespass is not shown by any other document at all.

13. It is for the plaintiff to prove his or her own case. Neither juridical, nor actual possession of the plaintiff is seen. A party, who does not show a legal right under lawful authority, cannot get reliefs in a Court of law.

14. Upon such a flimsy case of the plaintiff, even an interim order of complete protection did not come to be granted by the trial Court. Though the plaintiffs suit is for injunction simpliciter, the Court Receiver was appointed in this case. The plaintiff was appointed as the agent of the Court Receiver, pending the Suit. The evidence of the plaintiff's Constituted Attorney, as deposed in his cross-examination, is that since December, 2002 the plaintiff was not residing in the suit premises and she was at her native place. Further, in his cross-examination he has deposed that on the date of the evidence her husband was also at native place. He has also deposed that before the transaction the plaintiff and Shantaram Jadhav were not staying jointly in the suit property.

15. It is, therefore, seen that after the Receiver was appointed and the property became custodia legis and the plaintiff continued only as an agent of the Court Receiver. Thereafter the plaintiff did not continue in possession.

16. Pending this Appeal, it has been contended that the plaintiff has transferred possession of the suit premises to the third party illegally. Hence, an order came to be passed directing the Court Receiver to make a report in this regard. The

Court Receiver's Report dated 2-3-2007 in this Appeal shows that one Megha Y. Malandkar was found in the suit premises. The plaintiff was not found in the suit premises. Megha Malandkar was stated to be the sister of the plaintiff. Her husband was stated to be the brother-in-law of the plaintiff. Consequently, on 21-4-2007 the plaintiff was directed to prove how Megha was her sister. Such aspect could be proved only by the birth certificates of the two ladies and the marriage certificate of the said Megha. These documents are not produced. The illegal transfer in favour of another third party pending appointment and continuation of the Court Receiver is seen. No such transfer can be effectuated or can be allowed by the Court. It may be mentioned that since the Court Receiver was appointed and the plaintiff was seen not to be residing in the suit premises as per the oral evidence of her own Constituted Attorney. The learned trial Judge has given directions in respect of the discharge of the Court Receiver. In the normal course the Court Receiver is required to hand over possession to the party from whom the Court Receiver has taken possession. It is implicit that such possession was lawful possession. Hence at least entry in possession must be shown to be lawful. After the entire trial and upon seeing and satisfying itself about the false and bogus case of the plaintiff and upon seeing that the plaintiff was not in possession of the same, it would be absurd and a travesty of justice to direct the Court Receiver to hand over possession of the suit premises to the plaintiff who came to Court with such unclean hands and by production of false and bogus documents. The learned Judge, therefore, directed the Court Receiver, upon his discharge, to hand over possession to MHADA after taking premises back from the plaintiff, who was his agent.

17. The appellant's Advocate has challenged this direction. This direction is passed further to the disposal of the Suit on merits. The trial Court has seen, and correctly, that the plaintiff tried to use bogus and fraudulent documents and dismissed the plaintiff's suit. The trial Court has also considered that the plaintiff was in possession of the suit premises only as an agent of the Court Receiver, pending the suit. It is further seen that the plaintiff no longer resided in the suit premises. The protection of the property by the appointment of the Receiver of the Court is to enure to the benefit of the party succeeding in the litigation. It cannot enure to the benefit of the party specifically failing in the litigation.

18. It is argued on behalf of the appellant that this order tantamount to a decree of eviction against the plaintiff. What has to be seen is whether the plaintiff is entitled to any relief from the Court, directly or indirectly. What the plaintiff cannot obtain directly, she cannot also obtain indirectly or by default. The directions passed by the Court pursuant to the final adjudication on merits, must follow the main order of the Court. Further directions can only be passed as a corollary to the main order. It cannot, therefore, be inconsistent with such order. Upon the plaintiff not showing any possession which can be protected, the plaintiff's possession in the suit premises has not been protected. Hence, she cannot be handed over such possession, which never was, from the officer of the Court.

19. Pending the Appeal, the intervenor applied for being heard. That application has been granted. The intervenor has produced the allotment letter dated 25-5-2001. The original letter is produced in Court. It bears the rubber stamp and signature of the issuing authority of MHADA. The allotment is made for consideration mentioned in the letter. The letter substantiates the evidence of witness of MHADA that the suit premises could not have been allotted to the plaintiff since it was allotted to another party. That party is the intervenor in Appeal. A look at the letter shows that it is a genuine document. It is not a got up document after the judgment in the suit. It is the same letter that the witness of MHADA has deposed about. Consequently, the evidence of MHADA'S witness that the suit property was initially sealed and later allotted to a third party upon consideration is substantiated. Consequently, the plaintiff's documents are further seen to be fake.

20. Mr. Saraogi, on behalf of the appellant, argued that even if the plaintiffs suit is dismissed, the plaintiff must get back the possession. MHADA must follow due legal process before the plaintiff can be evicted. His argument fails to stand to reason or common sense. It will lead to a absurdity. It would put a premium on dishonesty. That is exactly the plaintiffs Suit and the reliefs she claims. That has been dismissed on merits. Every litigation is required to come to a conclusion after it has turned full circle.

21. Mr. Saraogi relied upon a judgment of the learned Single Judge of this Court in the case of Smt. Pramila Lalibhai Dabhoya and Anr. v. Dr. Harish L. Dabhoya reported in 2005 (5) Mh. L.J. 90 : 2005 (4) ALL MR 288. That was a case between the mother and son. The plaintiffs son was in possession of the suit premises. The mother was directed not to disturb that possession without following due legal process. That is naturally so. If the possession of the plaintiff is seen, that could be the only direction that can be passed by the Court. If the possession of the plaintiff is not seen, none can be protected.

22. Another judgment relied upon by Mr. Saraogi is that of the learned Single Judge of the Orissa High Court in the case of Nabekishore Sahu and Another Vs. East India Arms Co., . That was a case of long uninterrupted possession upon trespass. Naturally, therefore, the Court protected it. The plaintiffs case of possession is seen to be dishonest. There is no question of uninterrupted possession. No possession at all is shown. None of these judgments apply to this case.

23. The learned Judge has fully considered the oral and documentary evidence of the parties. He has come to the correct conclusion about falsity of the plaintiffs claim. He has also considered the plaintiffs conduct, pending the suit when she continuously lived in the native place.

24. The Court Receiver's Report further shows that position. Not only has the plaintiff left the suit premises, but she has illegally inducted a third party. No such third party can continue in possession in a premises which was custodia

legis or claim any rights therein. Such induction is contemptuous. It is only made to outwit the Court and to frustrate the orders that can be passed. Admittedly, in this case, no party was in possession except the plaintiff, as is her own case at the time of filing of the suit. Upon the appointment of Court Receiver, no further rights could be created and none can be transferred, pending the suit.

25. It has been argued on behalf of the appellant-plaintiff that the plaintiff was ill and, therefore, in the village. If the plaintiff was ill, she would have been temporarily in her native place. In that case, the premises should have been locked.

26. If the said Megha Malandkar is the sister of the plaintiff as claimed, she would not be in the suit premises during the illness of the plaintiff without the plaintiff. At best, she would be in the suit premises with the plaintiff.

27. Just as there is absolutely nothing to show the plaintiff's possession prior to the suit, it is seen that the plaintiff has transferred the premises illegally and put third party in the possession illegally, pending the appointment of the Court Receiver and during the tenure of the Court Receiver.

28. The appointment of the Court Receiver itself in a suit simpliciter for injunction speaks volumes of the plaintiffs case. That was seen by the Court even prima facie pending the suit and at the interim stage. The purpose of such appointment must be to protect the suit property and not transfer it. It must be to further justice and not to frustrate it. The direction passed by the learned Judge upon the dismissal of the suit in the interest of justice directing the Court Receiver to hand over possession to the owner of the premises i.e. MHADA, who was seen not to have put the plaintiff in possession as per her case, is, therefore, not only correct but just and equitable. The order deserves to be upheld in its entirety.

29. The Appeal is dismissed with costs at Rs. 5,000/- condition precedent. The Court Receiver shall take forcible possession of the suit premises from whoever is found therein, with Police assistance, if required, if the plaintiff does not hand over possession of the suit premises within 4 weeks from today. The Court Receiver shall hand over possession to MHADA, the owner of the suit premises.

30. Mr. Saraogi applies for "12 weeks" time". Application rejected.