(2010) 06 BOM CK 0097

In the Bombay High Court

Case No : Suit No. 1580 of 2004

Sukriti Maingi	APPELLANT
Vs	
Indrani Chowdhary and Others	RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Specific Relief Act, 1963 — Section 5

Citation : (2010) 06 BOM CK 0097

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : J.M. Sidhawa, instructed by Joseph and Associates, for the Appellant; A.M. Saraogi and Seema Gupta for Deft. Nos. 1 to 3, for the Respondent

Judgement

Roshan Dalvi, J.—The Plaintiff has sued for recovery of possession of flat No. 18/A in Sparsh Co-operative Housing Society at Janakalyan Nagar, Marve Road, Malad (West), Mumbai-400 095 (the suit flat) from Defendant Nos. 1, 2 and 3 on title u/s 5 of the Specific Relief Act.

2. The Plaintiff is the proprietress of M/s. Global Maritime Organisation. She has shown her title under the Deed of Sale dated 21.8.1992 produced by her in evidence along with the share certificate issued by Sparsh Co-operative Housing Society showing the admission of the Plaintiff''s proprietary concern as a member upon the shares being transferred to her on and from 14.3.1992.

3. It is the Plaintiff''s case that the husband of Defendant No. 1, who was the father of Defendant Nos. 2 and 3, (since deceased) was employed by Defendant No. 4- Company in which the Plaintiff as well as her husband were Directors. He was given occupation of the suit flat during his service under his letter of appointment. The employment of the deceased under the letter of appointment is admitted. The deceased died in harness. His employment came to be terminated upon his death. It is claimed by the Plaintiff that upon such

termination the suit flat was to be vacated and his possession handed over to the Plaintiff.

4. Defendant Nos. 1, 2 and 3 were given time to vacate on humanitarian ground. They continued to reside in the suit flat, though the flat was used as the additional office premises of the Plaintiff. Defendant Nos. 1, 2 and 3 were required only to pay electricity and telephone bills.

5. It is the Plaintiff''s case that on 2.2.2004, Defendant No. 1 informed Defendant No. 4 that she would hand over the keys of the suit flat to it. Defendant No. 4 in turn informed the Plaintiff that it would hand over the keys to the Plaintiff. It is the Plaintiff''s case that on 5.2.2004 the keys of the flat were handed over accordingly, Defendant Nos. 1, 2 and 3 vacated the suit flat and the Plaintiff took possession thereof and put her lock thereon. It is the Plaintiff''s further case that the Defendants broke open the lock and re-entered the suit flat. They sent their notice dated 17.2.2004 to the Plaintiff alleging various facts which are disputed by the Plaintiff. The Plaintiff had to go out of Mumbai on 21.2.2004 when Defendant No. 2 entered the suit flat and threw out the Plaintiff''s caretakers. A criminal complaint was filed u/s 145 of the Criminal Procedure Code.

6. Thereafter this Suit has been filed on trespass. The Plaintiff has claimed in paragraph 14 of the Plaint that the occupation of the Defendants is unauthorised and that the Defendants have no right, title and interest in the suit flat and are liable to be evicted there from.

7. The Defendants in their Written Statement have denied the Plaintiff''s title. However, they have admitted the employment of the deceased and the appointment letter issued to him dated 13.7.1992. The Defendants have also denied handing over possession as alleged by the Plaintiff, the induction of the caretakers of the Plaintiff in the suit flat or the alteration that took place on 21.2.2004. However, the Defendants claim to have filed an FIR against the Plaintiff also and have admitted the proceedings u/s 145 of the Criminal Procedure Code filed by the Plaintiff against him.

8. It is the case of the Defendants that upon the employment of the deceased he was to be given the suit flat on ownership basis. He was paid a salary of Rs. 14,000/-. He and his family were accommodated in the suit flat and it was agreed that the suit flat would belong to him permanently. It was further agreed that after sometime the documents of transfer would be executed and it was subsequently agreed that the salary of the deceased would be reduced from Rs. 14,000/- to Rs. 7,000/- and would be appropriated towards the cost of the flat which was valued at Rs. 6 Lakhs in 1992. The deceased accepted the deduction in salary only on the representation and assurance of the Plaintiff that her husband would transfer the suit flat to the name of his son, Defendant No. 2. These Defendants have relied upon a certain letter (without date) to the effect that the salary of the deceased would be reduced in paragraph 23 of the Written

Statement. The Defendants claim to have paid consideration for the suit flat by means of deduction of salary and accordingly, claim their right, title and interest to the suit flat.

9. Based upon the respective pleadings of the parties, this Court framed the following issues which are answered as follows:

ISSUES

(1) Whether the Plaintiff is the owner of the suit premises being flat No. 18/A in Sparsh Co-op. Hsg. Sty., Jankalyan Nagar, Malad (W), Mumbai 400 095. - Yes

(2) Whether the Plaintiff permitted Defendant No. 4 to use the suit flat for the residence of the employees of Defendant No. 4. - Yes

(3) Whether Defendant No. 4 allowed the predecessor-intitle of Defendant Nos. 1, 2 and 3 to use and occupy the suit flat only during his employment. - Yes

(4) Whether the predecessor-in-title of Defendant Nos. 1, 2 and 3 acquired ownership rights in respect of the suit flat by virtue of payment of consideration from his salary. - No

(5) What relief, if any, is the Plaintiff entitled to ? - As per final order.

10. Mr. Saraogi on behalf of Defendant Nos. 1 to 3 requested the Court to frame an additional issue relating to the handing over of the flat on 5.2.2004 upon the premise that the flat stated to have been given to the deceased as an employee of Defendant No. 4 is stated to have been vacated and returned to Defendant No. 4. The re-entry of the Defendants on 21.2.2004 would constitute a fresh cause of action upon forcible dispossession of the Plaintiff''s caretakers. It is contended by him that upon the case of re-entry of the Defendants the initial case of the flat having been given by way of employment benefit comes to an end and if the re-entry is not proved the Plaintiff''s Suit must be dismissed.

11. It may be mentioned that the Suit is for recovery of possession. The Suit is based on title. The Plaintiff has to prove her title. The Defendants are admittedly in possession of the suit flat. That possession is claimed to be wrongful possession by the Plaintiff. The possession of the suit flat has to be handed over by the Defendants to the Plaintiff unless the Defendants show their right, title and interest in the suit flat, their re-entry under the incident of 21.2.2004 notwithstanding. However, since the Plaintiff has alleged that Defendant Nos. 1, 2 and 3 handed over the keys of the suit flat to Defendant No. 4, who handed over the keys to the Plaintiff and the suit flat was vacated by the Defendants after which they re-entered into the suit flat, which aspect is disputed, and issue with regard to that may arise as stated by Mr. Saraogi. Hence further issues are added as issue Nos. (5) and (6) and answered as follows: Original issue No. (5) is renumbered as issue No. (6).

Issue No. (5): Whether the Defendants handed over possession of the suit premises on 5.2.2004 and re-entered the suit premises on 21.2.2004 by forcibly dispossessing the Plaintiff''s caretakers. - Not required to be answered.

Issue No. (6): Whether Defendant Nos. 1, 2 and 3 would be entitled to any rights in respect of the suit premises upon their re-entry. - No

Issue No. (7): What relief, if any, is the Plaintiff entitled to ? - As per final order.

12. The Plaintiff has examined herself and the officer of Defendant No. 4. Defendant No. 2 has been examined on behalf of Defendant Nos. 1, 2 and 3. The Plaintiff has produced her documents of title, the admitted letter of appointment of the deceased, copies of the income tax returns of the deceased as also the correspondence between the parties after his death relating to the possession of the suit flat and its recovery. Defendant No. 2 has produced documents showing their possession in the suit flat.

13. Issue No. (1): The Deed of Sale dated 21.8.1992 and the share certificate of Sparsh Co-operative Housing Society Ltd. show the Plaintiff''s title. These documents are marked Exhibits A and B, respectively in evidence. Besides, Defendant Nos. 1 to 3 claim their title from and through the Plaintiff. They claim transfer of the suit flat from the name of the Plaintiff to their names. Consequently, issue No. (1) is answered in the affirmative.

14. Issue Nos. (2)&(3): The Plaintiff as well as her husband are the Directors of Defendant No. 4. There is no dispute between the Plaintiff and Defendant No. 4 with regard to the permission of the Plaintiff to Defendant No. 4 to use the suit flat for the residence of the employees of Defendant No. 4. The letter of appointment dated 15.7.1992 of the deceased shows that he would be paid a salary of Rs. 5,000/- per month. He would be allotted a furnished and equipped premises for use as additional office-cum-residence. These premises would be vacated by him on termination / expiry of his service. This is an admitted document. It shows the permission by Defendant No. 4 to the deceased to use the suit flat for his residence. The notice issued by the Defendants through their Advocate dated 16.2.2004 also shows an implicit admission of these Defendants that the husband of Defendant No. 1 was the employee of Defendant No. 4 having an agreement with them to use the premises till his retirement. Further, an FIR filed by the Defendants pursuant to an altercation that took place between the parties also shows that the husband of Defendant No. 1 was given the suit premises for his residence on behalf of his Company, Defendant No. 4 by the owner of the flat, the Plaintiff.

15. Consequently, both these issues are answered in the affirmative.

16. Issue No. (4): It has been the case of the Defendants that the deceased acquired ownership rights by paying consideration from his salary. The Defendants have not shown how the consideration was paid. Paragraph 23 of the Written Statement of the Defendants shows that the husband of Defendant No. 1 was earning Rs. 14,000/- as salary which came to be reduced to Rs. 7,000/-. The Defendants claim that that was because of the appropriation of part of the salary

towards the cost of the suit flat. The Defendants relied upon a letter to that effect. That letter has not been produced in evidence. Defendant No. 2 has been cross-examined upon this aspect. He has stated in his evidence that there was no such letter.

17. The Income Tax returns of the husband of Defendant No. 1 relied upon by the Plaintiff shows salary drawn by him of Rs. 5,000/- per month. This has come to be increased over the years to Rs. 6,500/- per month. The initial salary is in conformity with the appointment letter of the husband of Defendant No. 1 dated 15th July 1992. The income tax returns do not show any higher salary earned by him. They do not show the salary of Rs. 14,000/- or the deduction of Rs. 7,000/- there from. The income tax returns were shown to Defendant No. 2 in his cross-examination. He has identified the signature of his father. The contents of the income tax returns must, therefore, be taken to be admitted. Strangely, Defendant No. 2 has stated in his cross-examination that they were filed only for income tax purposes and do not reflect the true salary.

18. The case of these Defendants in the Written Statement was that Rs. 4,50,000/- were collected by the Plaintiff from the deduction of salaries towards the purchase of the flat. The flat was to be purchased for Rs. 6,50,000/-. The cross-examination of Defendant No. 2 shows that Rs. 2,50,000/- were paid.

19. There had been an altercation between the parties upon the breach of peace. A complaint had been filed u/s 145 of the Criminal Procedure Code by the Plaintiff being CC No. 162/N/2004 marked Exhibit P-8 in evidence. Defendant Nos. 2 and 3 in their reply to the complaint dated 11.2.2004 have not made any mention of the deduction of the salary or the payment of the amount for or towards the transfer and the ownership of the suit flat.

20. The Defendants Advocate''s notice dated 16.2.2004, Exhibit-H in evidence, shows Rs. 3,000/- per month being deducted from the salary for transfer of the suit flat. Similar is the statement in the FIR filed by the Defendants upon an altercation between the parties on 23.2.2004. In another statement made to the Police, Exhibit P-9 in evidence, these Defendants have claimed Rs. 7,000/- having been deducted from the salary. Though the evidence of Defendant No. 2 was of deduction of Rs. 7,000/-, upon being shown the FIR filed by his mother dated 23.2.2004, he stated that if she had made such a statement in the FIR, it would be true. Consequently, he accepted that not Rs. 7,000/-, but Rs. 3,000/- were deducted from his father''s salary. Defendant No. 2 also stated in his cross-examination about a cash component_ a concept left unexplained and unsubstantiated. His own evidence shows that the amount deducted from his father''s salary would vary from time to time. How much could be varied is not shown because he has not been aware of any record having been maintained by his father of the deductions from his salary. He has deposed that he is not aware about in all how much his father paid to his employer for purchase and transfer of the suit flat.

21. A reading of the entire evidence shows that no deductions whatsoever were made from his father''s salary on account of the purchase of the suit flat. The documents produced by the Defendants only show their possession in the suit flat. They do not show their possession upon title acquired by the husband of Defendant No. 1. There are no salary slips of the father reflecting any deduction. There is no account maintained by the father to show how much has been paid or deducted from his salary from time to time. The Defendants have not specified how the deductions from his salary were made. The very letter initially relied upon by the Defendants in their Written Statement albeit without date has been refuted by Defendant No. 2 in his cross-examination. In fact, his evidence shows that he is not even aware of his father''s salary or whether it was fixed before or after the purchase of the suit flat. His evidence only shows that his salary decreased over a period of time or fluctuated with the performance of the Company. Such decrease or fluctuation is not reflected in the income tax returns of various years produced by the Plaintiff and identified by him.

22. He has been cross-examined on the amounts of the Society charges and maintenance amounts paid. His evidence shows that they were paid by the Plaintiff. At times when his father paid in cash he paid on account of the Plaintiff. The evidence further shows that the Plaintiff used to pay telephone bills of the suit flat also.

23. His convenient evidence was that because the Plaintiff''s husband was his father''s nephew and the parties were in near relations, no written documents were executed, accounts kept or deductions shown.

24. The Defendants have not shown what was the total amount of consideration paid and what was the actual amount of consideration agreed to be paid for the suit flat. Further, admittedly, no transaction in writing for transfer of the suit flat has been executed pursuant to any agreement between the parties. The suit flat was, therefore, not transferred and is not shown to be agreed to be transferred. In this regard, the evidence of Defendant No. 2 becomes material.

25. A reading of the entire evidence does not make out any case that the husband of Defendant No. 1 paid any amount for and in respect of the transfer either personally or by way of deduction of his salary under any agreement or arrangement or otherwise to them. The Defendants_ oral evidence does not prove this fact. Hence issue No. (4) is answered in the negative.

26. Issue Nos. (5) & (6): It is the Plaintiff''s case that the employment of the husband of Defendant No. 1 came to an end upon his death. Consequently, the grant of the suit flat to him for residence, which was an incident of his employment, also came to an end and possession of the suit flat had to be returned to Defendant No. 4 and thereupon to the Plaintiff. The parties are in near relations. The husband of the Plaintiff is the nephew of the husband of Defendant No. 1. After the death of her husband, Defendant No. 1 with her children admittedly continued to reside in the suit premises. It is the Plaintiff''s

case that the suit premises also continued to be used as office premises as before. The Plaintiff admittedly paid the electricity and telephone bills as well as the Society''s charges and taxes.

27. It is the Plaintiff''s case that on 2.2.2004 Defendant No. 1 desired to hand over the keys of the suit flat. It was agreed that that would be done on 5.2.2004. The keys were handed over as agreed initially to the Director of Defendant No. 4, who is the Plaintiff''s husband who in turn handed it over to the Plaintiff. The Plaintiff continued the office activity there from. She put in certain caretakers upon Defendant Nos. 1, 2 and 3 vacating the suit flat. It is the Plaintiff''s case that thereafter the Advocate for Defendant Nos. 1 to 3 sent his letter dated 16.2.2004 to the Plaintiff making allegations and on 21.2.2004 when the Plaintiff was out of Mumbai, these Defendants entered into the suit premises, assaulted the caretakers and took possession of the suit flat.

28. Consequently, in paragraph 14 of the Plaint, the Plaintiff has averred that the occupation of Defendant Nos. 1, 2 and 3 in the suit flat is unauthorised and the Defendants are trespassers, liable to be evicted.

29. It is the case of Defendant Nos. 1, 2 and 3 that after the death of the husband of Defendant No. 1, the Plaintiff wanted to take advantage. On 5.2.2004, the Plaintiff and her husband came to the suit flat and stated to Defendant No. 1 that Rs. 2,50,000/- were due and payable towards the dues of the suit flat. He tried to forcibly snatch some papers and documents from the Defendants and assaulted the Defendants. These Defendants put on record of the Society certain facts.

30. Consequently, these Defendants have admitted that they continued to reside in the suit premises after the death of the husband of Defendant No. 1 and have denied that they handed over the keys of the suit flat to the Plaintiff on any date or vacated the suit flat. It is their case that they continued to reside in the suit flat.

31. It may be mentioned that occupation and possession of the premises must be under colour of title. Whatever may be the altercation between the parties, the rights claimed by them must be under authority of law. The Plaintiff has shown her title by documentary evidence. That title is admitted. In fact, it cannot be denied as the Defendants claim under the said title by way of an agreement to transfer the suit flat upon consideration paid by deduction of the salary of the husband of Defendant No. 1.

32. The Suit is for recovery of title. Once the Plaintiff shows her title and when the Defendants do not show transfer of that title to them, the prayer for recovery of possession must be granted.

33. Hence even if it is not proved that the suit premises were handed over on 5.2.2004 by Defendant Nos. 1, 2 and 3 to Defendant No. 4 and thereafter to the Plaintiff and they re-entered upon the suit premises on 21.2.2004, Defendant

Nos. 1, 2 and 3 would not be entitled to any rights in respect of the suit premises. Consequently, issue No. (5) is not required to be answered and issue No. (6) is answered in the negative.

34. Issue No. (7): ORDER

The Suit is decreed in terms of prayer (a). Prayer (b) is not pressed. There shall be no order as to costs.