

Krishna Ram Mahale (Dead), By His Lrs. vs Mrs. Shobha Venkat Rao on 9 August, 1989

Equivalent citations: AIR1989SC2097, (1989)91BOMLR302, JT1989(3)SC489, 1989MHLJ1130, 1989(2)SCALE424, (1989)4SCC131, 1990(1)UJ71(SC), AIR 1989 SUPREME COURT 2097, 1990 UJ(SC) 1 71, (1989) 3 BOM CR 364, (1989) 2 APLJ 77, (1989) MAH LJ 1130, (1989) MPLJ 767, (1989) 3 JT 489 (SC), (1990) 2 LANDLR 210, (1990) 1 CIVLJ 290, (1990) 1 LJR 39, (1990) 1 RENCER 525, 1989 (4) SCC 131, 1989 BOM LR 91 302

Bench: K.N. Singh, M.H. Kania

JUDGMENT

Kania, J.

1. This is an appeal against the judgment of a Division Bench of the High Court of Bombay in First Appeal No. 283 of 1969 by special leave granted by this Court under Article 136 of the Constitution.
2. We propose to consider first whether any interference with the judgment of the High Court is called for in this appeal and hence, we intend to take note of such facts as are relevant to consider that question.
3. Respondent was the plaintiff in Suit No. 725 of 1959 filed by her in the Bombay City Civil Court and the appellant was defendant No. 3. For the sake of convenience, we propose to refer to the parties by their description in the suit.
4. On December 25, 1956 defendant No. 3 entered into an agreement whereby he granted permission to the plaintiff to conduct the business: of a restaurant known as "Meenakshi Bhuvan" which later came to be known as "Central Cafe Udipi" of which he was the owner and which was conducted in tenanted premises. This restaurant was situated at Vishvas Nivas King, Edward road Parel, Bombay. The period of this agreement was for five years commencing from December 25, 1956 ' with an option to renew the same. Under the agreement, defendant No. 3 was referred to as the owner and the plaintiff was referred to as the conductor. It is significant that in the opening part of the agreement the expression "conductor" was defined as inclusive of the heirs, executors, administrators and assigns of the plaintiff. This agreement provided that all furniture, pots, pans, utensils and things mentioned in the list attached thereto would continue to belong to defendant No. 3 and the plaintiff admitted this fact. Certain payments were to be made by the plaintiff to defendant No. 3 by way of royalty. On January 11, 1958 the plaintiff entered into an agreement with defendant No. 1 permitting defendant No. 1 to conduct the business for the unexpired period of the agreement

dated December 25, 1956 which was about for four years and the agreement further provided that defendant No. 1 was to pay Rs. 700/- per month to the plaintiff and that the plaintiff would not be responsible for any loss in the business but was entitled to get the monthly amount of Rs. 700/-. It appears that although this agreement was with defendant No. 1, it was defendant No. 2 who conducted the business of the said restaurant.

5. Some time prior to May 18, 1958 a notice was addressed by defendant No. 3 to the plaintiff. However, on May 18, 1958 a letter was addressed by defendant No. 3 to the plaintiff stating that all notices sent by him to the plaintiff were cancelled and that it was agreed between the plaintiff and defendant No. 3 that there shall be certain changes in the terms of the agreement dated December 25, 1956 as set out in the said letter. The changes which need be noticed by us are only that the period of agreement was to remain extended till April 30, 1965. Certain payments of amounts by the parties were noted and paragraph 3(H) of the said letter stated that all other terms of the former agreement remained as they were. It may be noted here that no change made expressly regarding the right to renew the said agreement. On January 10, 1959, according to defendant No. 3, a notice was addressed by one B.M. Gujar, his advocate on his behalf to the plaintiff at the restaurant address giving one month's notice to the plaintiff for resuming possession and stating that if the plaintiff failed to give possession of the said restaurant to defendant No. 3, he would proceed in a court of law. The said notice was addressed at the address of the restaurant. On February 12, 1959 another notice was addressed by the said advocate at the same address stating that there was no reply to the first letter and that defendant No. 3 would approach the plaintiff for taking possession of the said restaurant on February 15, 1959. There is considerable conflict as to what transpired on February 15, 1959. According to the plaintiff, she never received any of the notices referred to above sent by the advocate of defendant No. 3 as aforesaid as they had been deliberately sent to the restaurant knowing fully well that she would not be present there and that defendant No. 3 had managed to secure possession of the said restaurant and the premises wherein it was being conducted by colluding with defendant Nos. 1 and 2. Defendant No. 3, who was the only contesting defendant appearing in the court gave different and inconsistent versions of what had happened. In his affidavit dated March 26, 1959 filed by him in a notice of motion dated March 4, 1959 in the said suit, he stated that the possession of the said restaurant was given to him with the knowledge and consent of the plaintiff. In the said affidavit, it was also stated that it was the plaintiff who gave him the possession of the said restaurant on February 15, 1959. In his written statement defendant No. 3 alleged that it was defendants Nos. 1 and 2 who had handed over the possession of the said restaurant to him on behalf of the plaintiff. Curiously, defendant No. 1 filed a written statement in which he was never put in possession on the restaurant and the agreement between him and the plaintiff was never acted upon. No written statement was filed by defendant No. 2 who was conducting the business of the said restaurant. What is more curious is that he was present in the Trial Court through out the trial but never stepped into the witness box and defendant No. 3 in his evidence gave different versions as to how he had obtained possession of the said restaurant. At one stage he even stated that he was entitled to take possession without recourse to law. Mr. Gujar, advocate who was supposed to have sent the notice to the plaintiff on behalf of defendant No. 3 never gave evidence at all and the evidence of his peon regarding the service of the notice was found thoroughly unsatisfactory. He tried to support the version that he went to the plaintiff's residence and met her husband there and her husband told him to deliver the notice at the restaurant address,

a story which was rightly disbelieved by the Trial Court. It was pointed out by the Trial Court that defendant No. 3 had failed to give any consistent version as to how and from whom he got possession of the said restaurant, that he was reluctant to tell the whole truth and held that the evidence on record was sufficiently clear to show that the plaintiff was not aware at all that defendant No. 3 had obtained possession of the restaurant when that event occurred. The Trial Court came to the conclusion that on February 15, 1959 defendant No. 3 had really unlawfully obtained possession of the said restaurant and premises in which the said business was conducted by colluding with defendants Nos. 1 and 2 and had surreptitiously entered into the possession of the said restaurant behind the plaintiff's back.

6. The Trial Court held that defendant No. 3 had unlawfully deprived the plaintiff of the possession of the said business and the premises where it was conducted. The judgment of the Trial Court was delivered on January 13, 1969. It was urged on behalf of defendant No. 3 before the Trial Court that the possession of the premises should not be restored to the plaintiff because the period of the aforesaid agreement dated December 25, 1956, even as extended by a letter dated May 18, 1958, was only upto April 13, 1965 and that period had already expired. The Trial Court repelled this contention and took the view that although the period of the agreement was extended as aforesaid the right of renewal had remained in favour of the plaintiff. The Trial Court further held that as the plaintiff's possession at its inception was lawful, defendant No. 3 could get back the possession only by recourse to law. The Trial Court passed a decree for possession in favour of the plaintiff and ordered the defendants inter alia to pay mesne profits at the rate of Rs. 310/- per month from the date of filing of the suit till the plaintiff was put in possession.

7. Defendant No. 3 appealed against this decision to the High Court. The High Court dismissed the appeal. The High Court agreed with the assessment of the evidence made by the Trial Court and totally disbelieved the case put up by defendant No. 3 that he had obtained possession of the aforesaid business and the premises in which it was conducted either with the knowledge or with the consent of the plaintiff and came to the conclusion that defendant No. 3 had surreptitiously obtained the possession of the aforesaid business and premises by collusion and behind the back of the plaintiff. The High Court noted the serious inconsistencies in the evidence given by defendant No. 3 and his witnesses and rejected their evidence. The High Court pointed out that a couple of documents produced by defendant No. 3 appeared to be extremely doubtful and had little sanctity either in fact or in the eye of law. The High Court took the view that defendant No. 3 had acted high-handedly and had wrongfully taken possession of the said business and the premises behind the back of the plaintiff and the acts of defendant No. 3 were nothing short of trespass. It was also sought to be contended by defendant No. 3 before the High Court that the period of licence had already expired and the possession should not be restored to the plaintiff. The High Court categorically rejected that contention. In the first place, it pointed out that it would amount to nothing short of a travesty of justice on the facts and circumstances placed before the court to allow defendant No. 3 to remain in possession of the restaurant in the suit. The High Court further took the view that although the agreements were termed as "licence", they were really sub-leases and hence, the possession of the plaintiff even after the period of licence was not in any way unlawful or without authority of law.

8. Mr. Tarkunde, learned Counsel for defendant No. 3, the appellant herein, rightly did not go into the appreciation of the evidence either by the Trial Court or the High Court or the factual conclusions drawn by them. It was, however, strongly urged by him that the period of licence had expired long back and the plaintiff was not entitled to the renewal of licence. It was submitted by him that in view of the licence having come to an end, the plaintiff had no right to remain in charge of the business or the premises where it was conducted and all that the plaintiff could ask for was damages for unlawful dispossession even on the footing of facts as found by the High Court. We find ourselves totally unable to accept the submission of Mr. Tarkunde. It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors.* . this Court in that judgment cited with approval the well-known passage from the leading privy Council case of *Midnapur Zamindary Company Limited v. Naresh Narayan Roy* 51 I.A. 293 at p. 299. where it has been observed (p-208):

In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

9. This proposition was also accepted by a Division Bench of this Court in *Rant Rattan and Ors. v. State of Uttar Pradesh* . The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the plaintiff entering upon the premises as a trespasser at all, as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. Thus, defendant No. 3 was not entitled to dispossess the plaintiff unlawfully and behind her back as has been done by him in the present case. It was pointed out by Mr. Tarkunde that some of the observations referred to above were in connection with a suit filed under Section 6 of the Specific Relief Act, 1963 or analogous provisions in the earlier Specific Relief Act, 1877. To our mind, this makes no difference in this case as the suit has been filed only a few weeks of the plaintiff being unlawfully deprived of possession of the said business and the premises and much before the period of six months expired. In view of the aforesaid conclusions arrived at by us, we do not propose to consider the question whether the agreement between the plaintiff and defendant No. 3 amounted to a licence or a sub-lease.

10. Even apart from what we have observed above, we feel that in this case the conduct of defendant No. 3 is such that we should decline to entertain his appeal by special leave under Article 136 of the Constitution. In the first place, he has unlawfully taken possession of the business and the premises thereof by collusion and behind the back of the plaintiff. He made every attempt to retain this possession by every means, right or wrong. It is interesting to note that even after his appeal was dismissed by a Division Bench of the Bombay High Court, instead of complying with the decree or

coming by way of a special leave immediately, in order to avoid compliance with the decree and to delay matters, he chose to file a suit, which can only be described as bogus, in the High Court being Suit No. 297 of 1974 for a declaration that the respondent herein (referred to by us 'the plaintiff') who was a defendant in that suit had no right, title or interest in the said premises or the business as from 1st May, 1965 and for a permanent injunction restraining her from executing the decree for possession obtained by her in the Bombay City Civil Court which was confirmed by the High Court. He took out a Notice of Motion for an interlocutory injunction in that suit which was dismissed by order dated 1 April 23, 1974. He led evidence which has been totally disbelieved by both the courts below. On a previous occasion when this appeal was taken up for hearing, learned Counsel for defendant No. 3, on instructions, made a statement that the plaintiff, who is the respondent before us, was dead. Without going into detail as to how that statement came to be made, we can only say that, in any event, instructions to make this statement seem to have been given recklessly and without any attempt to find out the truth thereof. The provisions of Article 136 are not intended to come to the assistance of such a party. In our opinion, this is certainly not an appeal in which any interference is called for under Article 136 of the Constitution.

11. In the result, the appeal fails and is dismissed with costs throughout. The amount deposited by the appellant in this Court will be permitted to be withdrawn by the plaintiff who is respondent before us.

12. learned Counsel for the respondent submitted before us that the conduct of the appellant was such that apprehension could justly be entertained that the appellant would try to avoid compliance with the decree for possession confirmed by this Court by putting some outsider in possession or some other underhand means and that we should direct the executing court that the decree should be executed with the police help against any person or persons who might be in possession of the business and premises wherein it was conducted. Instead of giving any directions to the executing court in this regard, we order that the Court Receiver of Bombay High Court is appointed as the Receiver of the said business and the premises in which the same was conducted as stated aforeaid. He will take possession of the said business and premises from whosoever may be in possession thereof. He may apply for police help in taking possession if he thinks fit. The Receiver will then put the plaintiff in possession as his agent on usual terms without security on payments of such outgoings as the Receiver may think fit but without asking for any royalty. This order will remain in force for a period of eight weeks from the date when the Receiver takes possession as aforestated but will be subject to any orders which the executing court may pass after hearing the respondent herein.