

# Dispossession Claim Dismissed for Lack of Evidence

**Case Name:** Fakruddin A. Choudhary v. Ali Mirza S/O  
Kaisar Mirza

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**Citation:** 2024:BHC-AS:39241

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**Act:** Maharashtra Court Fees Act, 1959

Case Brief & MCQs on this case is  
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October 2024](#)"



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.1878 OF 2011**

Shri. Fakruddin. A Choudhary,  
Age : 70 years, an adult, Indian  
Inhabitant of Mumbai, residing  
at Vinobha Bhave Nagar, Rambachan  
Chawl, 'C' Block, Pipe, Road, Kurla  
(East), Mumbai-400070.

...Appellant.

**Versus**

1. Ali Mirza s/o Kaisar Mirza  
2. Afroj Mirza s/o Kaisar Mirza  
3. Hussain Mirza s/o Kaisar Mirza  
All adults residing at, Haji Mansoor  
Ali Chawl, New Mill Road, Kurla (West),  
Mumbai -400070.

...Respondents.

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*Adv. J. S. Yadav a/w Mr. Vaibhav Sugdare i/b B. P. Shukla for the Appellant.  
Adv. Bipin Joshi a/w Sakshi Agarwal for Respondent Nos. 1 to 3.*

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**Coram : Sharmila U. Deshmukh, J.**  
**Reserved On : August 5, 2024.**  
**Pronounced On : October 4, 2024**

**JUDGMENT :**

1. The Appeal is at the instance of the Original Plaintiff being aggrieved by the judgment dated 30<sup>th</sup> July, 2011 passed by the City Civil Court dismissing the Short Cause Suit No. 3995 of 2004. The present Appeal was admitted on 10<sup>th</sup> October, 2011. For sake of convenience, parties are referred to by their status before the trial Court.

**FACTUAL MATRIX :**

**PLAINT :**

**2.** S.C. Suit No.3995 of 2004 was instituted seeking direction to the Defendants to restore the possession of the suit premises described as shop admeasuring 10' X 8' sq. ft. made of brick masonry walls and roof of cement sheet situated at Haji Mazar Ali Chawl, facing New Mill Road by side of Room No.4, Opp. of Dr. Swenti's Clinic, New Mill Road, Kurla (W), Bombay- 17 and to restore the suit premises back to its original position by removing all changes affected thereto.

**3.** The case of the Plaintiff is that for about five decades, the suit premises was in exclusive, use, occupation and possession of the Plaintiff's father and thereafter of the Plaintiff and his brother Badruddin and from the suit premises, the business of selling bread, biscuits, dry-fruits etc. in name and style of M/s. Modern Biscuits Stores was being carried out continuously and uninterruptedly. The Plaintiff and his brother had obtained shop and establishment license from the Bombay Municipal Corporation. The non agricultural tax in respect of suit premises was paid by the Plaintiff. During the year 2000, the census was carried out in which Application dated 26<sup>th</sup> July, 2000 of the Plaintiff was accepted by the Authority.

**4.** The Defendants were stated to be residing in the room behind the suit premises which was separated by common brick masonry wall. On 10<sup>th</sup> April 2003, at about 5:00 a.m., the Plaintiff and his brother reached the suit shop and saw that the Defendants had broken the common brick wall separating the suit premises and the Defendants premises and removed all articles lying in the suit premises i.e. ten small size cupboards, one suit-case containing cash, two air bags and all stock-in-trade. The Plaintiff and his brother went to the Kurla Police Station to lodge their complaint, however, instead of registering the complaint, the Police Authorities detained the

Plaintiff and his brother Fakhruddin under Section 151 of Cr.P.C. till 11:00 a.m. on the following day. After their release, they went to the suit shop at about 11:30 a.m. and found that the Defendants had removed the Plaintiff's lock to the shutter of this suit premises and had put their own lock. Writ Petition No.741 of 2003 was filed in this Court and pursuant to the orders passed by this Court, FIR came to be registered. Subsequently, proceeding under Section 145 of Cr.P.C. were adopted by the Plaintiff which is pending for disposal at the time of filing of the suit before the Metropolitan Magistrate Court, Kurla, Mumbai.

**5.** The Plaintiff was prevented from filing a suit under Section 6 of the Specific Relief Act, 1963 on account of the advise given to adopt criminal proceeding and therefore, the suit may be treated as suit on title for recovery of possession. The Plaintiff valued the suit for recovery of possession at the market value by Rs.20,000/- and paid the court fees.

**WRITTEN STATEMENT :**

**6.** An objection as to pecuniary jurisdiction was raised by the Defendants. It was contended that the documents produced by the Plaintiff were not in respect of the suit structure. One Kaisar Mirza, since deceased, was the tenant in respect of suit premises as well as other adjacent premises and was in exclusive occupation and in possession of the suit premises and residential premises. The rent in respect of the suit premises has been paid by the Defendants and the electricity meter installed in the suit premises stands in the name of Hassan Mirza, which electricity bill was later transferred in the name of Iftikar Banoo Mirza. In the year 2003, Defendant No.1 commenced the business of electronics repairs and renovated the suit premises which was previously being used for the purpose of storing their articles. It was contended that till the year 1977, the Defendant's

father and thereafter the Defendants had been using the premises for their personal use. It was contended that Mr. Hussain Mirza-Defendant No.3 and Mr. Haji Nazar Ali were contemplating to dispossess the Defendant No.1 from the suit premises for which suit was filed by the Defendant No.1 being L.C. Suit No. 1045 of 2003 in which injunction was granted. The allegations about the Defendants have been broken common wall and removal of all articles was denied. It was contended that the Civil Court has no jurisdiction to try and entertain the suit and no adequate Court fees were paid.

**ISSUES FRAMED AND ANSWERED BY THE TRIAL COURT :**

<b>Sr. No.</b>	<b>Issues</b>	<b>Findings</b>
<b>i)</b>	Whether the Plaintiff proves that he was in possession of suit premises till 10.04.2003 ?	In the negative
<b>ii)</b>	Whether the Plaintiff proves that he was dispossessed by Defendants on 10.04.2003 ?	In the negative
<b>iii)</b>	Whether the Defendants prove that they are in use, occupation and possession of suit premises since 1977 ?	In the negative.
<b>iv)</b>	Whether the Defendants prove that this Court has no pecuniary jurisdiction to try and entertain the suit ?	Suit does not fall within pecuniary jurisdiction of this Court.
<b>v)</b>	Whether the suit is barred by law of limitation ?	In the negative.
<b>vi)</b>	Whether the Plaintiff is entitled for reliefs as prayed in the suit ?	In the negative.
<b>vii)</b>	What order and decree ?	As per final order.

**EVIDENCE OF PLAINTIFF :**

7. The Plaintiff examined himself and deposed as to the contents of the plaint. In support, the documents admitted in evidence are the Shops and Establishment Certificates- Exhibit "8", N.A Order dated 12<sup>th</sup> September, 2002 with the show cause notice dated 2<sup>nd</sup> September, 2002- Exhibit "7" and the Order dated 7<sup>th</sup> November, 2003 passed in Writ Petition No. 741 of 2003- Exhibit "9".

8. In the cross examination, PW-1 stated that the shop is owned by him and since 1950 he is running the business which was earlier run by his father. PW-1 has admitted that he had applied for photo pass, but it was not received yet. He has admitted that he did not personally observe the incident. He has stated that he did not feel it necessary to determine the value of the shop because he does not intend to sell. In response to question recorded in question answer form as to whether the value of the property is more than Rs. 2,00,000/- he has stated that he does not want to reply because he has no intention to sell the property.

**EVIDENCE OF DEFENDANTS :**

9. Defendant No. 1 examined himself and deposed as to the contents of the written statement. He further deposed that on 1<sup>st</sup> October, 1973, the suit premises was given to one Miya Jani by way of conducting agreement executed between him and Kaisar Mirza Hasan Mirza and that the complaint was lodged at BMC against said Miya Jani to vacate the suit premises. He has further deposed that the landlord trustee of Haji Nazarali had sent legal notices to Kaisar Mirza for non payment of rent which was subsequently paid by him. In support, the documents admitted in evidence are copy of plan approved by Architect dated 26/02/1949-Exhibit-12, Copies of rent receipts dated 1/09/1962, 12/12/1979 and 02/05/2002-Exhibit-13, Copies of electricity bill dated 31/06/1991 and 24/09/2010 -Exhibit-14,

Copy of Shop and Establishment Certificate dated 10/06/2003- Exhibit 15, Copy of conducting agreement dated 21/09/1943 -Exhibit-16, Copy of letter to the Ward Officer dated 25/03/1982- Exhibit 17 and copies of advocates notice dated 07/03/1978, 07/10/1978 and 16/03/2007- Exhibit-18.

**10.** In the cross-examination, the Defendant has stated that the suit premises are commercial as well as residential and the suit premises admeasures about 10 ft. x 40 to 45 ft. In response to the question recorded in question answer form that the Plaintiff has filed the suit for the room of 10 ft. x 10 ft. and not for Room No. 4, he has stated that there is no such room. He has admitted that the Plaintiff has filed criminal case against him and that Plaintiff had filed the Writ Petition and the Police were directed to register a case against him. He has further admitted that the Police had arrested him and he was released on bail. He has stated that his parents had leased the land in front of Room No. 4 to Miya Jani which was Otla land admeasuring 5 ft. x 8 ft. He has admitted that the said Otla land is not shown in the plan at Exhibit 12. He has deposed that Miya Jani was in possession of Otla land from 1<sup>st</sup> October, 1973 to about 1988-89. He has further stated that in the year 1985 his mother had lodged a complaint with the Police against Miya Jani.

**FINDINGS OF THE TRIAL COURT :**

- (a) The suit seeks possession based on previous possession and is covered by Article 64 of Limitation Act, 1963. For a suit under Article 64 of Limitation Act, apart from previous possession nature of possession is also important and the Plaintiff has failed to prove nature of possession.
- (b) The suit premises is different from the room which is adjacent to the suit premises and is not part of the tenanted

premises.

- (c) The documentary evidence produced on record shows that the certificates have been issued in respect of Bread, Biscuits business carried on, which was also carried on by the Plaintiff's father.
- (d) The documentary evidence produced by the Defendants such as rent receipts, electricity bills etc are in respect of Room No 4. The Defendants are not in possession of the suit premises.
- (f) The valuation of suit premises by the Plaintiff is not supported by documentary evidence and therefore the Court does not have pecuniary jurisdiction.
- (g) The Plaintiff has failed to prove dispossession at the hands of the Defendants.

**SUBMISSIONS :**

**11.** Mr. Sudgare, Learned Counsel appearing for the Appellant-original Plaintiff would submit that the Trial Court has held that the Defendants were not in possession of the suit premises prior to 1977 and therefore no right can be claimed by Defendants. The suit was filed on the basis of the prior possession and there was sufficient documentary evidence on record to show prior possession. He has taken this Court in detail through the evidence on record and would submit that the N. A. Payment pursuant to N. A. Order, Certificate of Registration issued under the Bombay Shop And Establishment Act which is since 1968 would show prior possession. He would further submit that show cause notice was issued upon the Plaintiff for levy of N.A. Tax. He submit that it was specific case of the Plaintiffs that they have been dispossessed on 10<sup>th</sup> April, 2003 and that they had



been gone to the Kurla Police Station to lodge their complaint. He submits that he has produced the order passed in the Writ Petition dated 7<sup>th</sup> November, 2003 wherein this Court has directed the police to consider the complaint and register the same. He submits that subsequently, FIR was registered which has been admitted in the cross-examination. He submits that although there was sufficient documentary evidence on record to prove prior possession coupled with the fact that the Defendants have not able to prove their use or occupation of the suit premises since the year 1977, the Trial Court has dismissed the suit. He submits that the suit was not against the owner but against the trespasser and therefore, the nature of possession of the Plaintiff was immaterial. He would further submit that defense raised by the Defendants as regards the suit premises being Ota land which was given to one Miya Jani has been held not to be proved. He would further submit that the Trial Court has non suited the Plaintiff on the issue of pecuniary jurisdiction. He submits that the Plaintiff has valued the suit at Rs. 20,000/- and the valuation must be accepted as the Defendant had not applied for correction of that valuation. He submits that the Apex court in the case of ***Tara Devi vs. Sri Thakur Radha Krishna Maharaj [(1987) 4 SCC 69]*** has held that the plaintiff has the right to value the relief claimed according to his own estimation and such valuation has to be ordinarily accepted. He submit that the Apex Court has held that the Court is entitled to examine the correctness of the valuation given by the Plaintiff and to rectify the same, if, it is patently arbitrary or unreasonable. He submits that there was no contest by the Defendants and therefore, in the absence of any evidence being produced by the Defendants to dispute the valuation, the valuation placed by the Plaintiff is required to be accepted. In support of his contentions, he relies upon the following decisions.

- ***Nair Service Society Ltd. vs. Rev. Rather K. C. Alexander And Ors. [(1968) 3 SCR 163].***
- ***State of Andra Pradesh And Ors. vs. State Bone Mill & Fertiliser Company [(2013) 9 SCC 319].***
- ***Kiran Singh And Ors. vs. Chaman Paswan And Ors. [AIR 1954 SC 340].***
- ***Om Prakash Agarwal vs. Vishan Dayal Rajpoot [(2018) SCC Online SC 1942].***
- ***Dattatraya nagesh Deodhar vs. Ganesh Ragunath Apte [(1959) 0 AIR Bom 495].***
- ***Tara Devi vs. Sri Thakur Radha Krishna Maharaj [(1987) 4 SCC 69].***

**12.** *Per Contra*, Mr. Joshi submits that there is no proper description of the subject property by CTS number and it is described as shop by side of Room No. 4 admeasuring 80 sq. ft. He submits that for seeking recovery of possession, the Plaintiff has to prove dispossession which he has failed to do. He would further point out that in the entire plaint, there was no pleading as to the source of title and no relief of declaration of ownership. Pointing out the averments in the plaint, he submits that in the alternate the suit is pleaded to be suit on title for recovery of possession however, no title has been proved. He points out that the documents produced on record as far as the Shop and Establishment Act license is concerned does not show any shop or room number. He would further submit that the authenticity of these documents are in dispute as the renewal of registration is shown till 2007 when the dispossession is in the year 2003 and therefore, it is clear that the documents are not in respect of the suit premises. He would further submit that as far as the show cause notice of 2<sup>nd</sup> September 2002 is concerned the notice is issued to the Plaintiff and one Mohammad Johar Sharif and there is no reference about the

address. He would further submit that the order as regards the unauthorized structure in respect of the land admeasuring 4-2 sq. mtrs, that is about 45.9 sq. ft. which is more than area of the suit premises described in the plaint and the reference to CTS No. 93/2 is absent in the plaint. He would further point out that non agricultural land is stated to be put to use since the year 1985 whereas the license produced is of the year 1968.

**13.** He would further submit that the receipt for the tax is also issued in the name of Mohammad Sharif. He therefore, submit that there is no documentary evidence to show prior possession of the suit premises and in the cross-examination the statement of the Plaintiff is that the shop is owned by the Plaintiff, which he has failed to prove. He would further submit that on the contrary, the Defendants have produced documents such as the N.A. Tax receipts, electricity bills etc. to show that he was in possession of the suit premises. He submits that it is specifically stated in the written statement that the Defendants used the suit premises for the purpose of storage and that there has been a conducting agreement between the Defendant's father and Miya Jani.

**14.** He would further submit that the issue as regards the jurisdiction is evaded by the Plaintiff by stating that he does not know the market value of the suit premises. He further submit that there was conducting agreement between the Defendant's predecessor and one Miya Jani in respect of which the Defendant's mother had communicated with the BMC seeking Osla land being vacated by the said Miya Jani adjacent to Room No. 4 which is now stated to be the shop premises. He submitted that the Plaintiff has to prove prior possession and the documents which have produced by the Defendants would show that at least in the year 1982, the defendant's mother had written the letter to the BMC for vacating the Osla land in

front of Room No. 4 and therefore, the Plaintiff's case that he was in possession from five decades cannot be accepted. In support of his contentions, he relies upon the following decisions:

- ***Captain Sodhi Harnam Singh And Anr. vs. Kanshi Ram And Ors. [AIR 1958 Punjab 178].***
- ***Ramyad Singh vs. Mt. Pan Keur and Ors. [AIR 1958 Patna 562].***

**15.** In rejoinder, Mr. Sudgare would submit that the Court had held that the suit has been filed under Article 64 of the Limitation Act and therefore, all that was required to prove was prior possession. He would further point out that the Trial Court has held that the shop registration certificate has been issued in respect of bread, biscuits business which was also carried out by the father of the Plaintiff and N.A. order has also issued in respect of said land and that the document can be said to be related to the use of non agricultural land. He submits that in view of the findings against the Defendants which has not been challenged by the Defendants, the said finding attained finality.

**POINTS FOR DETERMINATION :**

- (i) Whether on the basis of the evidence adduced, the Plaintiff can be held to be in possession of the suit premises prior to 10<sup>th</sup> April, 2003.
- (ii) Whether the Plaintiff has been dispossessed from the suit premises at the hands of the Defendant on 10<sup>th</sup> April, 2003.
- (iii) Whether the City Civil Court lacked the pecuniary jurisdiction to entertain and try the suit.

**AS TO POINT NO (i) :**

**17.** The suit premises is described in the plaint as a shop admeasuring about 10ft. X 8ft. made of brick masonry walls and cement sheet roof and situated at Haji Mazar Ali Chawl, facing New Mill Road, by the side of Room No.4, Opp Dr. Swenti's Clinic, New Mill Road, Kurla (West), Mumbai. As per Order VII Rule 6 of CPC , where the subject matter of suit is immoveable property, the plaint is required to contain a description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. There is no pleading in the plaint as regards the exact location of the suit premises with reference to the City Survey number.

**16.** The Plaintiff's case is of dispossession at the hands of the Defendants on 10<sup>th</sup> April, 2003 from the suit premises, which was in the exclusive possession of the Plaintiff's father and thereafter with the Plaintiff since last five decades. The nature of possession, whether as owner or mere occupier or tenant has not been pleaded in the plaint. In paragraph 8 of the plaint, there is a pleading that the suit be treated as suit on title for recovery of possession. However, no document of title in respect of the suit premises has been produced by the Plaintiff.

**17.** The Trial Court has thus rightly held that the suit is one for possession based on prior possession. The burden to prove the prior possession is on the Plaintiff and the evidence will have to be examined to ascertain whether the burden has been discharged by the Plaintiff. On the aspect of possession, apart from his oral evidence, the Plaintiff has produced the Shop and Establishment certificates issued under the Bombay Shops and Establishments Act, 1948 -Exhibit "8" and show cause notice dated 2<sup>nd</sup> September, 2002

issued under Section 45 of Maharashtra Land Revenue Code, 1966 for use of land admeasuring 4.2 sq. mtrs. for non agricultural purpose and N.A.order dated 12<sup>th</sup> September, 2002 -Exhibit "7" and order passed in Writ Petition No.741 of 2003 dated 7<sup>th</sup> November, 2003 -Exhibit "9".

**18.** The certificates issued under the Bombay Shops and Establishments Act, 1948 is in the name of A.A.S. Choudhary and describes the nature of business as Bread Biscuits. The address of the establishment is shown as N.M. Road, Opp: Dr. Sawant Dispensary, Kurla, Mumbai 400 070. The certificate has been issued in the year 1968 and there are subsequent renewals upto the year 2007. It is the specific case of the Plaintiff that the Plaintiff's father and thereafter he and his brother were carrying on business of selling bread, biscuit etc. in the name and style of M/s. Modern Biscuits Stores. In the cross-examination, the Plaintiff's testimony about the sale of biscuits from the shop and prior thereto by his father has not been shaken. Although the certificate shows the name of the Plaintiff's father, the same has been issued in the year 1968 and has been renewed upto the year 2007, though the Plaintiff claims to have been dispossessed in the year 2003. The subsequent renewals of the certificate despite being dispossessed would make it evident that there is no verification about the actual possession of the premises before the issuance of certificates. The certificates thus cannot be held to be cogent evidence of actual possession of the suit premises.

**19.** The show cause notice dated 2<sup>nd</sup> September, 2002 -Exhibit "7" as well as the N.A order dated 12<sup>th</sup> September, 2002 is in respect of land admeasuring 4.2sq. mtrs. which is equivalent to about 45.19 sq. ft. The dimension of the suit shop is described as 10' X 8' i.e. about 80 sq. ft. The dimensions of the suit structure exceeding the area of the land, creates a doubt about the N.A. Order being in respect of the suit structure. In the N.A. Order the land in subject is referred by CTS No.

93/2 belonging to one Mohammed Johar Sharif. There is no evidence as to the CTS number of the suit structure and no evidence in respect of the ownership of the land. The Plaintiff has failed to prove the nexus between the show cause notice read with N.A. Order and the suit structure. That apart, the N.A. Order dated 12<sup>th</sup> September, 2002 has been issued in favour of Mohammed Johar Shariff and copy is forwarded to the Plaintiff. Thus the show cause notice and the N.A. Order cannot be said to be corroborative proof of the Plaintiff's possession of the suit premises.

**20.** Even if it is accepted that the shops and establishment license is issued in name of the Plaintiff's father since the year 1968, mere issuance of license is not sufficient to show that the Plaintiff was in actual possession of the suit premises prior to 10<sup>th</sup> April, 2003. The case of the Plaintiff is that since last five decades, the Plaintiff's father and thereafter the Plaintiff and his brother were running the business from the suit premises. As the Plaintiff claimed to be running a business from the suit premises, there must be invoices raised in respect of goods purchased, bill books printed, electricity bills in respect of the suit premises, payment of taxes in respect of the business. However no such document has been produced. The Plaintiff could have also examined the neighbours in the vicinity to prove their actual possession. Apart from Plaintiff, no witness has been examined, not even the brother of the Plaintiff.

**21.** Reliance is placed by Mr. Sudgare on the decision in ***State of A.P. Vs Star Bone Mill & Fertiliser*** (supra) which was rendered in the context of Section 110 of Indian Evidence Act, 1872 in a case where the suit was filed claiming title over the subject land. In that facts, the Apex Court has held that a person must establish continued possession while the other side claiming title must make out a case of trespass/encroachment etc. There is no quarrel with the said

proposition of law, however, the same is inapplicable to the present case where firstly, the suit is not for title and secondly, the Plaintiff has failed to prove possession.

**22.** In the absence of any cogent evidence of actual possession of the suit premises, the Point No (i) is answered in the negative.

**AS TO POINT NO (ii) :**

**23.** Considering that I have held that the Plaintiff has failed to prove his possession prior to 10<sup>th</sup> April, 2003, it would not be necessary to consider whether the Plaintiff has been dispossessed on 10<sup>th</sup> April, 2003 by the Defendants. Even otherwise, the Plaintiff has failed to prove dispossession at the hands of the Defendants. The Plaintiff has deposed that on 10<sup>th</sup> April, 2003 at about 5:00 a.m. when he and his brother reached the suit shop, they saw that the Defendants have broken the common brick masonry wall separating the suit premises and removed all articles lying in the suit premises. He has further deposed that on 11<sup>th</sup> April, 2003 when he went to the suit shop, he found that the Defendants had removed his lock and put their own lock.

**24.** The Plaintiff had to prove that the incident of dispossession had occurred on 10<sup>th</sup> April, 2003 and at the hands of the Defendant. In the cross-examination, the Plaintiff has admitted that he came to know about throwing of articles at 6:30 a.m. and that he has not personally observed the incident. As the Plaintiff had deposed that consequent to the order passed by this Court FIR came to be lodged, the same was material evidence to prove the occurrence of incident on 10<sup>th</sup> April, 2003. The oral evidence of the Plaintiff could have been corroborated by the evidence of the Plaintiff's brother and by production of the FIR on record. The Plaintiff has neither examined his brother nor produced the FIR lodged on record.



**25.** The admission of the Plaintiff that he has not personally observed the incident coupled with the absence of any other evidence to prove the occurrence of the incident on 10<sup>th</sup> April, 2003 demolishes the case of the Plaintiff that on 10<sup>th</sup> April, 2003 at about 5 a.m, the Defendants had broken the common masonry wall and removed the Plaintiff's articles and thereafter put their own lock on the suit premises.

**26.** Upon cumulative appreciation of the evidence on record as discussed above, in my view, the Plaintiff has failed to prove his dispossession at the hands of the Defendants on 10<sup>th</sup> April, 2003. Accordingly, I answer Point No. (ii) against the Plaintiff.

**AS TO POINT NO (iii) :**

**27.** The suit has been filed for recovery of possession of the suit premises described as a shop admeasuring about 10ft. X8ft. made of brick masonry walls and cement sheet roof and situated at Haji Mazar Ali Chawl by the side of Room No.4. Section 6 of the Maharashtra Court Fees Act, 1959,(Court Fees Act) provides for the computation of the the amount of fees payable under the Court Fees Act in the various classes of suits specified therein and Section 6(v) provides that in suits for possession of house, the court fees has to be paid according to the market value of the house. Under Rule 2 of The Maharashtra Suit Valuation Rules, 1983, in suits for possession of house mentioned in paragraph (v) in Section 6 of Court Fees Act, for purpose of jurisdiction, the value of the property is to be determined according to the market value of the house. Thus, the market value of the suit premises would constitute the jurisdictional value.

**28.** The pecuniary jurisdiction of the City Civil Court at the relevant time was upto Rs 50,000/-. The Plaintiff in the suit has valued the suit premises at Rs.20,000/ as the market value for purpose of jurisdiction

and paid Court fees accordingly. In the written statement, the Defendant has objected to the pecuniary jurisdiction of the Court to try and entertain the suit.

**29.** The Trial Court settled all issues including the issue of pecuniary jurisdiction and cast the burden upon the Defendants to prove that the suit did not fall within the pecuniary jurisdiction of the City Civil Court. The parties led evidence on all issues and the Trial rendered finding on all issues. On the issue of jurisdiction, the Trial Court held that neither the Plaintiff nor the Defendant brought any satisfactory evidence in respect of the valuation of the suit premises.

**30.** The burden of proof was upon the Defendants to show that the suit was undervalued. No evidence has been led by the Defendants on the market value of the suit premises to oust the jurisdiction of the Civil Court. The Trial Court has adopted a unique method to determine the market value of the suit shop *suo motu* by considering the location of the shop, and purpose the suit shop and has declined to accept the valuation of Rs. 20,000/- by the Plaintiff and has held that the market value exceeds Rs. 50,000/-

**31.** Section 8 of the Court Fees Act, provides for an inquiry as to the valuation of the suit where the Court is of the opinion that the subject matter of any suit has been wrongly valued and the correct valuation may be determined by holding such inquiry as thinks fit. Section 9 of Court Fees Act empowers the Court to depute or issue a commission to any suitable person to make such local or other investigation as may be necessary and to tender report to the Court, which report and any evidence recorded by such person shall be evidence in the enquiry.

**32.** In the present case, there was no inquiry or investigation by the Court under Section 8 of the Maharashtra Court Fees Act, 1959 and

the Trial Court on its own knowledge considering the location of the suit shop and the purpose of the suit shop has come to a finding that the valuation done by the Plaintiff at Rs. 20,000/- is not supported by satisfactory evidence. The Trial Court although observed that there is no available material in form of the ready reckoner issue by the sub-registrar, for want of satisfactory evidence has not accepted the valuation. It is not open for the Civil Court to adopt such a course for the issue of undervaluation affected the jurisdiction of the Trial Court to entertain and try the suit.

**33.** The decisions of *Dattatraya Nagesh Deodhar vs Ganesh Raghunath Apte* (supra) and *Tara Devi vs. Sri Thakur Radha Krishna Maharaj* (supra), were rendered in the context of Section 7(iv) (c) and (f) of the Court Fees Act, 1870 which provides that the Plaintiff shall state the amount at which it values the suit. The said decision is clearly inapplicable in view of paragraph (v) of Section 6 of The Maharashtra Court Fees Act.

**34.** There is no evidence produced on record to substantiate the valuation of the suit premises. Neither any inquiry was conducted by the Trial Court to ascertain the valuation. In the absence of any material on record, it cannot be said that the suit premises was undervalued or that the Trial Court did not have the pecuniary jurisdiction to entertain and try the suit. There was no evidence before the Trial Court to come to a finding of lack of pecuniary jurisdiction. The finding of lack of pecuniary jurisdiction being based on no evidence is therefore liable to be reversed.

**35.** Point No (iii) is answered accordingly.

**CONCLUSION :**

**36.** The evidence on record does not prove the Plaintiff's possession over the suit property prior to 10<sup>th</sup> April, 2003 or the

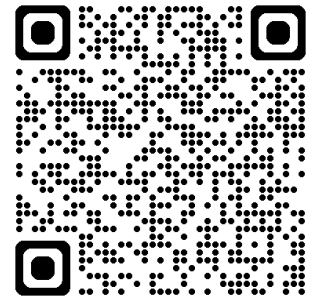
occurrence of the incident on 10<sup>th</sup> April, 2003 and dispossession of the Plaintiff. The Defendants have not filed cross objections in respect of the findings recorded against the Defendants by the Trial Court and those findings have therefore attained finality.

**37.** In light of the discussion above, S.C. Suit No. 3995 of 2004 is liable to be dismissed. Impugned Judgment dated 30<sup>th</sup> July, 2011 dismissing the suit is upheld. First Appeal fails and stands dismissed.

**[Sharmila U. Deshmukh, J.]**

Case Brief & MCQs on "Fakruddin A. Choudhary v. Ali Mirza S/O Kaisar Mirza" (2024:BHC-AS:39241) is available in the eBook:

## *"Bombay High Court Cases in October 2024"*



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