

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 5 OF 2024
WITH
CIVIL APPLICATION NO. 116 OF 2024 (Filing No.)
IN
SECOND APPEAL NO. 5 OF 2024

- 1 Shri Pratap Seethapathy
Son of late Mr Purshotam Seethapathy,
Aged 53 years, service,
Married and his wife,
- 2 Mrs Pratiksha Shettapathy
Wife of Mr Pratap Seethapathy
Aged 38 years, married, housewife,
Both residents of H.No.2,
Guiomazia-Annex, Near Power House,
Aquem, Margao Goa.
- 3 Shri Deepak Shetapathy
Son of late Mr Purshotam Seethapathy
Aged 54 years, service
Married and his wife,
- 4 Mrs Sharmila Shetapathy
Wife of Mr Deepak Shetapathy
Aged 46 years, married, Housewife
Both residents of Electricity
Department Quarters, Aquem,
Margao Goa.
- 5 Mrs Shashikala Shrivastav
Daughter of Late Mr Purshotam
Seethapathy,
Aged 46 years, service,
Married and her husband

6 Mr Rajesh Shrivastav,
Aged 54 years, married, service,
Both residents of H.No.F-5, Rogtao Plaza,
Near Power House, Aquem-Alto,
Margao Goa. Appellants

Versus

1 Mr George Inacio Loyola Coutinho
Son of late Mr Inacio Coutinho
Aged 62 years, retired,
Married, and his wife,

2 Mrs Jenifer Evette Alver Coutinho,
Daughter of Mr Euquerio C. J. Lopes,
Wife of Mr George Inacio Loyola Coutinho
Aged 55 years, married, Teacher,
Both Resident of H.No.1146, Vidya Nagar
Colony, Aquem – Alto,
Margao Goa. Respondents

Mr Shivan Desai and Ms Maria Viegas, Advocates for the Appellants.
Mr Vivek Vas, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

Reserved on : 2nd FEBRUARY 2024
Pronounced on: 5th FEBRUARY 2024

ORDER

1. Heard Mr Shivan Desai with Ms Maria Viegas, learned counsel for the Appellants and Mr Vivek Vas, learned counsel for the Respondents.
2. This Second Appeal is directed against the concurrent judgments and decrees dated 13.11.2019 and 09.11.2023 made by the Senior Civil Judge at Margao and Ad-hoc District Judge-1 at Margao, ordering the

Appellants' eviction from the suit premises consequent upon the termination of leave and license.

3. The Appellants are the original defendants, and the Respondents are the original plaintiffs in Regular Civil Suit No.373/2013/II instituted before the Senior Civil Judge at Margao seeking eviction of the Appellants from suit premises, consequent upon the termination of leave and license evidenced by written deeds of leave and license. The Appellants raised a plea of statutory tenancy, which was examined and rejected by the two Courts vide impugned judgments and decrees. Hence, the present Second Appeal.

4. Mr Desai, learned counsel for the Appellants, submitted that the Appellants' parents, and after their demise, the Appellants were placed in exclusive possession of the suit premises from 01.06.1975. He pointed out that though after every eleven months, the deeds styled as deeds of leave and license were executed, still, from the tenor of the deeds and the attendant circumstances, it was clear that the Appellants were statutory tenants of the suit premises and not merely licensees. Mr Desai submitted that the two Courts have not discussed the clauses of deeds but have gone merely by nomenclatures of leave and license.

5. Mr Desai submits that the Appellants' father passed on 02.08.2005. After that, on 10.12.2007, the first Respondent filed a complaint before the Superintendent of Police, alleging that the Appellants had interfered

with the septic tank and not paid any rent from September 2005. He submits that the very fact that the payment was referred to as “*rent*” and not “*compensation*” or “*license fee*” shows that even the Respondents regarded the Appellants as tenants and not mere licensees. He submits that this aspect was not adequately considered by the two Courts, thereby vitiating the impugned judgments and decrees.

6. Mr Desai submitted that the last of the so-called deed of leave and license was executed on 01.12.2003 and its purported term expired on 13.10.2004. Mr Desai submitted that for almost seven years after this date, the Appellants continued in possession of the suit premises even without any formal documentation. Mr Desai submitted that on 13.10.2012, the Appellants filed an application under Rent Control Act for deposit of arrears of rent, and such application is still pending. The Respondents' claim about allowing the Appellants and Appellants' parents to continue in the suit premises even without execution of any formal document, allegedly on a humanitarian basis, was incongruous with the Respondents' conduct of filing a police complaint or serving a notice to quit. He submitted that the two Courts erred in accepting such an incongruous case set out in the plaint by the Respondents.

7. Mr Desai submits that the mere fact that the parties repeatedly entered into deeds of leave and license was not at all conclusive, and two Courts were duty-bound to examine the contents of such documents and attendant circumstances. He submitted that the license about the

Appellants not being in exclusive possession was contrary to the contents of the deeds and weight of evidence on record. He submitted that merely because the electricity bills were in the name of the Respondents, no case of license could have been inferred by the two Courts. For all these reasons, Mr Desai submitted that the finding about the relationship is that of a licensor or licensee and not that of landlord and tenant suffers from perversity and warrants interference.

8. Mr Desai proposed the following two substantial questions of law which, according to him, arise for determination in this appeal.

- (a) Whether the agreements entered into between the Respondents as landlord and Appellants (including its predecessors) for a period of 29 years continuous, uninterrupted year, r/w attended circumstances establishes the lease hold relationship governed by Goa Daman & Diu Buildings (Lease Rent and Eviction) Control Act, 1968?
- (b) Whether the Appellate Court misconstrued the nature & import of agreements from 1975 to 2004 and erroneously placed excessive reliance on the form/title of the agreement rather than the substance of the said agreements & the attended circumstances including the factum that they were executed successively for 29 years by virtue of which Appellant was in uninterrupted possession and occupation of the suit premises and established ingredients of tenancy?

9. Mr Desai relied upon *Achintya Kumar Saha Vs Nanee Printers and others*¹, *Guy Vigney Athanasius D'Melo and Another Vs Government of Goa, Daman and Diu*², and *Ana Francisca Braganza and Another Vs Jawaharlal Edwin do Carmo Moniz and Another*³ in support of Appellants' case.

10. Mr Vas, learned counsel for the Respondents, defended the impugned judgments and decrees based on the reasoning reflected therein. He pointed out that both the Courts have considered the contents of deeds of leave and license as well as attendant circumstances and only after that concluded that the Appellants were mere licensees. He submitted that there is no perversity in the concurrent findings of fact. He submitted that from 2005, the Appellants did not even bother to pay the license fee for the use of suit premises. He submitted that since the relationship between the Respondents' father and the Appellants' parents was cordial, immediate proceedings for eviction were not instituted upon realising that the Appellants' father and, after the passing away of the Appellants' father, their mother was bedridden.

11. Mr Vas submitted that even after the demise of the Appellants' parents, since the Appellants refused to quit using the suit premises, notices were issued, and the suit was instituted. Mr Vas submitted that a patently false defence of statutory tenant was raised after that by the

¹ (2004) 12 SCC 368

² FA No.185 of 2003 decided on 16.12.2011

³ (2021) 3 Bom CR 685

Appellants. Mr Vas submitted that there was no question of law, much less any substantial questions of law, involved in this appeal, and therefore, this appeal should be dismissed. He relies on *Hasmat Ali Vs Amina Bibi and others*⁴ and *Delta International Ltd. Vs Shyam Sundar Ganeriwala and Another*⁵ in support of the Respondents' case.

12. In rejoinder, Mr Desai submitted that even *Delta International Ltd.* (supra), relied upon by Mr Vas, provides that the intention of the parties must be gathered from the document itself. If the terms of the documents are ambiguous, then the surrounding circumstances and conduct of the parties must also be borne in mind. In particular, he referred to the observations in Paras 18, 19 and 23 of *Delta International Ltd.* (supra).

13. The rival contentions now fall for determination.

14. In *Hasmat Ali* (supra), the Hon'ble Supreme Court has explained that if a second appeal does not involve any substantial question of law, the High Court has no option but to dismiss the appeal. Suppose the High Court is satisfied after hearing the Appellant at the time of admission that the appeal does not involve any substantial question of law. In that case, such an appeal can be dismissed in limine but after assigning reasons in support of its conclusion. Thus, the Court must display conscious application of mind even after dismissing the appeal at the admission stage.

⁴ 2021(4) CCC 331 (SC)

⁵ 1999(2) ALL MR 576

15. In the present case, there is no dispute that after every eleven months, the parties would execute a deed of leave and license defining their *inter se* relationship. The last such deed was executed on 01.12.2003. Mr Desai admitted that all these deeds of leave and license were almost identical in their material contents.

16. Mr Desai's contention that two Courts have gone only by the nomenclature of the deeds but failed to look into or analyse its various clauses cannot be accepted. The two Courts have adverted to clauses of deeds for concurrently concluding that the relationship between the parties was that of the lessor or licensee as very clearly stated in the deeds and documents executed by and between the parties and not that of landlord and tenant.

17. From the perusal of deeds and documents, there is no scope to infer any ambiguity and, based upon such ambiguity, to look into the surrounding circumstances or conduct of the parties. However, even if the surrounding circumstances and conduct of the parties are to be taken into account, the same supports concurrent findings about the Appellants being mere licensees in respect of the suit premises. Thus, the principles in *Delta International Ltd.* (supra) stand complied with by the two Courts, thereby giving rise to no question of law, much less any substantial question of law.

18. Mr Desai and Mr Vas focused on the last leave and license deed dated 01.12.2003 entered into between the parties. The contents of this document are transcribed below for the convenience of reference.

"LEAVE AND LICENCE DEED

This Leave and Licence Deed executed on 1st of December 2003, BY AND BETWEEN Mr. Inacio J. X. da C. Coutinho, who is the power of attorney holder of G. I. Loyola Coutinho (who shall be referred to hereinafter as Lessor) and Mr. Sheetapathy major in age, (who shall be hereinafter referred to as the Licensee) Witnesseth as under :

WHEREAS the Lessor is the owner of the land and has constructed a building on the land bearing Matriz No.69 at Aquem. Margao and whereas the Licensee has approached the Lessor to grant unto him Leave and Licence of a residential "GUIOMAZIA ANNEXE" No.2 for a term of eleven months. Whereas the Lessor has agreed to grant the same on a monthly Licence Fee of Rs. 150/- (RUPEES ONE HUNDRED FIFTY ONLY) it is agreed by and between the parties that the terms and conditions of this Leave and Licence shall be as under :

1. *The Licensee shall also pay 50% of the Municipal taxes charged annually which will be levied from time to time such amount as the premises occupied and the same is payable in advance being at the time of executing this Deed.*
2. *The period of this Leave and Licence shall commence as from 1st December 2003, (1.12.2003); and shall expire on 30th October 2004 (30.10.2004) during which period the Licensee shall pay to the Lessor Rs150/- (Rupees ONE HUNDRED FIFTY ONLY) per month and the payment shall be effected on/or before the 5th day of each month.*
3. *The Lessor has put the Licensee in possession of the "GUIOMAZIA ANNEXE." No.2. behind the main building.*
4. *The Licensee shall be liable to take care of the premises as his own house and shall have to make good to the Lessor any damage or losses which may be caused either by the Licensee or any of his agent or representative.*

5. The Licensee shall not store any explosive substance or corrosive material in the premises and shall use the same exclusively for residential purpose only.

6. The Licensee shall not throw waste matters in the compound around the building premises. but to throw in M.M.C. DUSTBIN and shall not rear any animals and is not entitled to cultivate or plant any trees.

7. The Licensee shall not let, lease or grant unto any other person of the said premises or any other part thereof nor shall he carry any offensive trade therein.

8. The Licensee shall pay bills for electricity and water consumed by him, however the electricity and water installation shall remain in the name of the Licenser.

9. If the Licencee has got a car he must pay parking charges.

10. The Licencee shall be liable to make good the damages caused to the building either by him, his employees, agents or friends. He shall be liable to pay towards repairs, as may be necessitated by the willful negligence or intentional waste by him, his employees, agents or friends.

11. The Licencee shall not make or permit to be made any alterations or additions to the said fixtures or in the construction or arrangement (internal or external) of the said flat without prior written consent of the Owner.

12. It is hereby agreed and declared that No TENANCY RIGHTS or any title or interest in the nature of tenancy or any other interest whatsoever except that of a Licencee is hereby created.

13. On expiry of this Leave and Licence period, the Licencee shall give quiet and peaceful vacant possession of the property hereby demised to the Licenser.

14. If the aforesaid Licence fee is not paid regularly every month by the Licencee or if it remains unpaid in arrears for more than two consecutive months, this Leave and Licence will be null and void and the Licencee shall be liable to be ejected immediately by recovering all damages and indemnization.

15. *The Licencee if desirous of continuing with this Leave and Licence for further period, a notice in advance of intention In writing to the Licensor, one month before the expiry of this Leave and Licence and a fresh deed shall be executed otherwise this Leave and Licence shall expire, at the end of this eleven months period, and the Licencee should give quiet and peaceful vacant possession of the premises hereby demised, to the Licensor. That the Licensor shall have the right to eject the Licencee on breach of any of the conditions herein mentioned without prejudice to his right to realise all arrears of amount due.*

16. *If the Licencee gives any cause to institute legal proceedings through Court of law for ejection, he will be responsible to pay legal expenses and other indemnization to the Licensor.*

17. *The Licencee may vacate the premises by giving two, months advance notice to that effect. The Licensor may terminate this Leave and Licence by giving one months notice to that effect.*

18. *All proceedings which may have to be initiated by either party under this Leave and Licence shall be at Margao only.*

IN WITNESS WHEREOF the Owner and the Licencee have hereto at Margao signed the day, month and the year first above mentioned.

Signed and delivered by Mr. I.J. Coutinho
1. LICENSOR: Sd/-

Signed and delivered by Mr. Sheetapathy
2. LICENCEE: Sd/-“

19. Mr Desai submitted that the fact that Appellants were required to pay 50% of the Municipal Taxes (clause 1) or that they were put in possession of the suit premises (clause 3), or that they were restrained from letting, leasing or granting suit premises to any other person (clause 7) makes it clear that this document, though styled as a leave and license deed was in fact nothing but a document creating a tenancy. Mr Desai relied

on Achintya Kumar Saha (*supra*), Guy Vigney Athanasius D'Melo (*supra*), and Ana Francisca Braganza (*supra*) in support of this contention.

20. None of the clauses referred to by Mr Desai suggests that the document styled as leave and license deed had created any statutory tenancy favouring the Appellants. The leave and license deed has to be read in its entirety, and based upon clauses quoted by Mr Desai, there is no question of inferring statutory tenancy or holding that the deed of leave and license was not what it purported to clearly and unambiguously state.

21. Though the nomenclature of the document is not conclusive, it does not mean that the nomenclature must be completely excluded from consideration. The document repeatedly states that only a license was granted. The tenor of clauses is only permissive. Clause 12, in no uncertain terms, declares that "**No TENANCY RIGHTS or any title or interest in the nature of tenancy or any other interest whatsoever except that of licensee is hereby created**". The two Courts have considered the contents of the leave and license deeds produced on record by the parties, and criticism to the contrary is unjustified.

22. In *Delta International Limited* (*supra*), the Hon'ble Supreme Court has held that the intention of the parties is to be gathered from the document itself. Mainly, the intention is to be gathered from the meaning and words used in the document except where it is alleged and proved that the document is a camouflage. In the present case, the written statement

does not allege, or in any case, the Appellants have failed to prove that the document was a camouflage.

23. Merely pleading that the Appellants were statutory tenants and no licensees does not make a document a camouflage. Therefore, based not merely on the nomenclature of the document but on clear and ambiguous clauses in the document, the two Courts were justified in concurrently concluding that the document spelt out a relationship of licensor or licensee amongst the parties and there was neither intention of creating nor was any statutory tenancy ever created.

24. *Delta International Limited* (supra) also provides that if the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties also have to be borne in mind for ascertaining the real relationship between the parties. Here, the terms of the documents evidencing the agreement between the parties are quite clear and unambiguous. Therefore, there is no necessity of advertiring to the surrounding circumstances or conduct of the parties. However, even if such surrounding circumstances or conduct of the parties is considered, there is no reason whatsoever to conclude that the parties ever intended to or have created a relationship of tenancy.

25. The circumstance that the Appellants continued post 30.10.2004 without any formal document does not suggest that the Appellants became the tenants of the suit premises from the said date or that they were always

tenants. The Respondents have explained in the plaint that the relationship between the Respondents' parents and the Appellants' parents was quite cordial. They have explained that the Appellants' father and after the passing of the father, the mother was bedridden, and therefore, it was not deemed appropriate to seek their eviction. However, after the passing of the Appellants' parents, because the Appellants refused to quit the user, the proceedings were initiated. There is nothing incongruous in the pleading or evidence establishing this aspect. The two Courts have evaluated the evidence on record, and the findings suffer from no perversity.

26. Nothing much turns on the police complaint made by Respondent No.1 on 10.12.2007. The complaint was mainly regarding interference with the septic tank and damage to the pipeline. Incidentally, it was stated in the complaint that the first Appellant has not paid rent since September 2005. Very obviously, the reference to "rent" was a loose reference. Based upon such a reference, it is too much to infer that the relationship between the parties was that of landlord and tenant. The thrust of this complaint was the damage to the pipeline.

27. In *Delta International Limited* (supra), the Hon'ble Supreme Court has held that if a dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. The Court has held that a lease or license is a matter of contract between the parties. This contract is to be interpreted or construed on the

well-laid principles of construction of contractual terms, viz., for the purpose of construction of the contracts, the intention of the parties is the meaning of the words they have used, and there can be no intention independent of that meaning.

28. In *Achintya Kumar Saha* (supra), the Hon'ble Supreme Court has held that where Courts are required to consider the nature of transactions and the status of parties thereto, one cannot go by mere nomenclatures such as license, licensee, licensor, license fee etc. In order to ascertain the substance of the transaction, the Courts have to ascertain the purpose and the substance of the agreement. In such cases, the intention of the parties is the deciding factor. To ascertain the intention surrounding circumstances and conduct of the parties has to be examined.

29. *Achintya Kumar Saha* (supra), does not lay down any principle different than what was laid down in *Delta International Limited* (supra). In the present case, as noted above, the terms of the documents are quite clear and not ambiguous. Therefore, there was no reason to look into the surrounding circumstances or conduct of the parties. Still, the two Courts have adverted to the surrounding circumstances and conduct of the parties. Even this Court, at the persuasion of Mr Desai, has considered the surrounding circumstances pointed out by Mr Desai. Even upon such consideration, no case is made to infer that this was a case of tenancy and not a mere license. Thus, even upon applying the principles in *Achintya*

Kumar Saha (supra), no case is made out to interfere with the concurrent findings of fact reached by the two Courts.

30. In *Guy Vigney Athanasius D'Melo* (supra), the facts which are not even remotely comparable to the facts in the present case. The coordinate Bench came to the conclusion that the relationship between the parties was that of tenancy and not a mere license. This decision, therefore, cannot be of any assistance to the Appellants in the present case.

31. *Ana Francisca Braganza* (supra), far from supporting the Appellants' case, supports the case of the Respondents. The High Court found that there was no ambiguity in the document executed by the parties. The Court held that the circumstance about there being no formal renewal for considerable time was not conclusive and based upon the same, no tenancy could be presumed or inferred. The Court found that clauses, quite similar to clauses in the present document, were consistent with the case of the license. Even *Guy Vigney Athanasius D'Melo* (supra) was considered and distinguished by this Court. The principles in *Delta International Limited* (supra) were also considered by this Court, amongst other decisions.

32. Accordingly, for all the above reasons, substantial questions of law as proposed or even otherwise any other substantial questions of law do not arise in this appeal. This appeal is accordingly liable to be dismissed and is hereby dismissed with costs. The Civil Application No. 116 of 2024 (F)

does not survive the disposal of the Second Appeal and the same is also disposed of accordingly.

M. S. SONAK, J.

TARI AMRUT NAGESH | Digitally signed by TARI AMRUT NAGESH
Date: 2024.02.05 15:07:28 +05'30'