

2022 LiveLaw (SC) 460

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.

MAY 06, 2022

CIVIL APPEAL NO. 3520 OF 2022 (ARISING OUT OF SLP(CIVIL) NO. 19303 OF 2021)

Samarpan Varishtha Jan Parisar & Ors. *VERSUS* Rajendra Prasad Agarwal & Ors.

Indian Easements Act, 1882; Section 52 - Licence - The inmates in the old age home are licensees and are expected to maintain a minimum level of discipline and good behaviour and not to cause disturbance to the fellow inmates who are also senior citizen - They have a legal right to stay in the room of the old age home only so long as they comply with the terms and conditions of such license - As a licensee, the plaintiffs have no right to stay in the accommodation allotted which is purely an approach to a human problem faced by the people in old age.
(Para 23-26)

Possession - Three types of possession - One as that of an owner, including co-owners; second as a tenant, when a right is created in the property; and thirdly permissive possession, the possession which otherwise would be illegal or that of as a trespasser. (Para 12)

For Appellant(s) Mr. Manoj Swarup, Sr. Adv. Mr. Shakti Kant Pattanaik, AOR Mr. Santosh Kumar, Adv.

For Respondent(s) Mr. Mukesh Verma, Adv. Mr. Shashank Singh, AOR Mr. Aman Pathak, Adv. Mr. Pranjal Sharma, Adv. Mr. Adarsh Upadhyay, AOR

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Judicature at Allahabad dated 01.10.2021 whereby the revision petition filed by the plaintiffs-respondents was allowed and interim injunction was restored, as was granted by the learned Trial Court.

2. The Municipal Corporation, Lucknow has constructed an old age home named Samarpan at Adil Nagar, Ring Road, Lucknow. In terms of the advertisement published on 05.12.2004, the appellant was granted lease for running such old age home initially for 15 years from 01.09.2005, but with a condition of renewal for a further period of 15 years. One of the conditions in the lease was that an Advisory Board shall be constituted by the lessee i.e., the appellant. The appellant framed rules and regulations for grant of services at the old age home. Such rules and regulations contemplated that the cooperation fund deposited by the inmates shall be used for accommodation, food, bed and other essential services of living and general treatment but expensive medical treatment and expenditure was to be borne by the inmates themselves. It also provided that if any rules of the complex are violated by any inmate, the Administration has got full right to expel him and dismiss his membership by issuing him one month period's notice. The relevant clause reads thus:

“21. If the Rules of the Complex are violated by any inmate person, the Administration has got full right to expel him and dismiss his membership by issuing him one month period’s advance notice. The Management reserves its right to do so.”

3. It was on 23.04.2016, the plaintiffs-respondents filled up an admission form to stay in the old age home giving the details about his four children, one son and three daughters. Two of the daughters stay at Lucknow and one son and one daughter are staying in Faizabad. The plaintiffs had also executed affidavits to comply with the rules and regulations as mentioned above.

4. There is a dispute as to whether the plaintiff no.2 is a psychiatric patient and misbehaves with the other inmates and staff, but without going into that fact, the question required to be answered is that what is the right of the inhabitant of an old age home to stay in such old age home.

5. It is stated that in terms of the conditions of the lease, the Committee held its meeting on 26.10.2019. In the said meeting, the stand of the plaintiffs was that if the administration has received any complaint against them, then they may be pardoned and they ensured that no such complaint would be received in the future. It was pointed that in difficult time of old age, the approach of the appellant should be compassionate with due generosity. It was decided by the Committee to allow one month’s more time to the plaintiffs so as to observe their behaviour. If no reforms were visible then, they would be told to leave the premises in terms of Rule 21.

6. Since no behavioral change was visible, the appellant cancelled the membership of the plaintiffs on 22.11.2019. It is thereafter, the plaintiffs filed a suit for injunction before the Civil Court, accompanied by an application for ad-interim injunction. On such application for interim injunction, the trial Court passed an order on 17.12.2019 that the plaintiffs should not be dispossessed during the pendency of the suit. However, in appeal, such order was vacated by the Court of Additional District Judge, Lucknow, on 20.10.2020. In further revision preferred by the plaintiffs, the order was set aside.

7. The plaintiffs have filed a counter affidavit before this Court, inter alia demanding an inquiry into the financial irregularities, embezzlement, internal mis-management of old age home and their miseries, extortion and torture. It is the stand of the plaintiffs-respondents that they acted as a whistle blower to highlight the financial misappropriations, misdeeds and inhumane attitude. The complaint was made regarding quality of food, facilities or medical treatment, misuse of donated vehicles etc.

8. In a separate affidavit filed by Shri Sunil Kumar Sharma, ACP Gazipur, it is stated that the plaintiffs are old-aged parents who have been abandoned by their own children. There are 24 other inmates but no such complaint has been made by them in the police station. It was also mentioned therein that as against security of Rs.25,000/-, the appellant has sought the deposit of Rs.75,000/-. It may be stated that Station House Officer was not a party to this suit but was impleaded by the plaintiffs before the High Court in the revision petition under Article 227 of the Constitution.

9. In a rejoinder affidavit filed by the appellant, the assertions made by Shri Sharma have been denied. It has been pointed out that two daughters Shikha Agarwal and

Ruchika Agarwal visit their parents and have given affidavits that they will act as guardian of their parents and will take care of their medical needs. It is also pointed that Shri Harpal Singh, the Supervisor of the District Social Welfare Department visited the old age home on 08.11.2020 and offered an alternative old age home of Social Welfare Department free of cost to the plaintiffs.

10. The learned counsel appearing for Municipal Corporation and the State submitted that they have nothing to add in the present appeal.

11. We have heard learned counsel for the parties and find that the issue required to be examined herein is that what is the status of the inmates in the old age home, are they licensee and/or they have a right to stay in the old age home for the lifetime as a matter of right.

12. Law recognizes three types of possession. One as that of an owner, including co-owners; second as a tenant, when a right is created in the property; and thirdly permissive possession, the possession which otherwise would be illegal or that of as a trespasser. In the present appeal, we are concerned with the possession falling in third category. This Court in a judgment reported as **Associated Hotels of India v. R.N. Kapoor**¹ has held that in case of a licensee, the legal possession continues with the owner as in terms of Section 52 of the Indian Easements Act, 1882, grant of a mere right to do upon the property of another, something which would in the absence of such right be unlawful. Thus, this is the essential characteristic which distinguishes a license from a lease.

13. In **Sohan Lal Naraindas v. Laxmidas Raghunath Gadit**², it has been held that a lease creates an interest in the property whereas a license creates no estate or interest in the immovable property of the grantor. It was held as under:

“8. A licence confers a right to do or continue to do something in or upon immovable property of grantor which but for the grant of the right may be unlawful, but it creates no estate or interest in the immovable property of the grantor. A lease on the other hand creates an interest in the property demised.”

14. In **Maganlal Radia v. State of Maharashtra**³, a lessee filed a petition under Article 226 of the Constitution for the writ of Certiorari to quash and set aside the orders passed by the Collector, Bombay calling him to vacate a plot situated on the Chowpatty Foreshore. One of the questions examined was whether the petitioner had a right to continue in possession for as long as possible. It was held as under:

“1. ...As a matter of substantive law, therefore, the petitioner has no colour of right to remain in possession of the suit premises and has no answer to the respondents' claim that he should vacate the land in question, and the present petition appears to have been filed merely for the purpose of gaining time and remaining in possession as long as possible.”

15. The High Court declined to entertain the petition on the ground that the petitioner was merely a licensee. It was held that the injustice that would have been caused if the

¹ AIR 1959 SC 1262

² (1971) 1 SCC 276

³ 1971 Mh.L.J. 57

present petition was entertained would be greater in view of the fact that the licence was for a purely temporary purpose.

16. In a later judgment reported as **Conrad Dias of Bombay v. Joseph Dias of Bombay**⁴, the father filed a suit against his son for injunction restraining the defendant from entering or remaining in the suit premises. It was held that the son who is residing with the parents in the house cannot claim any legal character much less, the character of a licensee as defined in Section 52 of the Easements Act. He is residing simpliciter as a member of the family and nothing more and nothing less. It was also held that the son has not claimed either tenancy or a licence and, thus, he has no legal character or status, except staying in the house as a member of the family. In view of the findings recorded, the appeal preferred by the son was dismissed.

17. In **Hyderabad Metropolitan Development Authority (HMDA) & Ors. v. M/s. Hotel Malligi Pvt. Ltd.**⁵, the respondent was granted a licence by the appellant over the land admeasuring 2500 square meters. The Court reiterated the principle that unlike a lessee, the legal incidence of a licence, in normal parlance, is that the licensee has no right to possession of the demised property as the legal possession always remains with the licensor. Thus, it was held as under:

“26. The concept of a licence, being wholly different from that of a lease, it is not open to the licensee to assert any leasehold rights over the licensed premises after expiry of the licence period and seek to prolong its occupation thereof. Its status upon expiry of the licence period is that of a trespasser. In any event, even if the licensee is in a position to establish that it was lawfully deprived of the benefits of the licence during its subsistence, the only relief that it can seek is in the form of compensation/damages. There is no legal and tenable basis for a licensee to assert a right to continue in occupation of the licensed premises after expiry of the licence period. The Court below seems to have been unmindful of the distinction between a licence and a lease, as is clear from the order dated 29.09.2016 passed in Arbitration O.P. No. 2229 of 2016, where it used the terms licence and lease interchangeably.”

18. The Division Bench of Madras High Court in a judgment reported as **General Merchant Association rep. by Secretary and Treasurer & Ors. v. The Corporation of Chennai, rep. by its Commissioner, Chennai**⁶ held that appellants were allottees of a shop in the Corporation Fruit Market. The shopkeepers challenged the action of the Corporation terminating their licence and calling upon the licencees to vacate and surrender possession of the respective shops in their occupation. It was held, while dismissing the writ petitions, as under:

“24. The entire case law on the subject revolves around the cardinal touch stone at which the relationship between the parties who claim to be licensors or licensees or lessors or lessees has to be decided is whether the grant creates an interest or estate in the property within the subject matter of the agreement. Delivery of exclusive possession, as has been held would not be conclusive to hold that the grant is a lease. The surrounding circumstances and the conduct of the parties as in the present case show that no interest in the property have not been created at any point of time in

⁴ 1994 SCC OnLine Bom 528

⁵ 2017 SCC OnLine Hyd 1

⁶ 1998 SCC OnLine Mad 848

favour of the writ petitioners/licensees of the Municipal Corporation stalls and the claims of the petitioners that they are lessees is far-fetched and cannot be sustained.

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26. It is also equally well settled the position of a licensee after termination becomes unlawful and the licensee is not entitled to any injunction restraining the licensor from evicting him as unlike a tenant a licensee does not have judicial possession and the possession always remains with the licensor and what was granted is a privilege in terms of the licence, which in the absence of such a grant becomes unlawful.

27. The occupation of the writ petitioners with respect to the stalls/shops in public market is referable to the licence originally granted as their status is that of a licensee. Once such a licence is terminated, the possession of the stalls become unlawful as they have no right and the possession of such possession after termination is not protected by any statutory provision. In terms of Section 63 of the Easements Act 1982, where licence is revoked the licensee is entitled to reasonable time to leave the property for removing all his goods which he has been allowed to place. A person continuing in the premises after the termination of licence, his status is as already pointed out is unlawful and he has no semblance of any right to continue in the premises.”

19. A three-Judge Bench of this Court in a judgment reported as **Rame Gowda (Dead) by LRs. v. M. Varadappa Naidu (Dead) by LRs. & Anr.**⁷ was considering the question of ad-interim injunction. It was held that the person in peaceful possession is entitled to retain his possession and in order to protect such possession, he may even use reasonable force to keep out a trespasser. It was further held that it is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. It was held as under:

“9. ...The “settled possession” must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession.”

20. Another three-Judge Bench in a judgment reported as **Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through LRs**⁸ was examining the question of injunction between the plaintiff – brother, who was given the property in question as a caretaker, the owner being sister of the plaintiff. An argument was raised before this Court that the possession of a caretaker can never be a possession in one's right and no suit for injunction under Section 6 of the Specific Relief Act was maintainable. It was held as under:

“83. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and Judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant.

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97. Principles of law which emerge in this case are crystallised as under:

⁷ (2004) 1 SCC 769

⁸ (2012) 5 SCC 370

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

21. In view of such finding, the appeal was allowed and possession of the suit premises was directed to be handed over to the appellant, the owner.

22. In another judgment reported as **Behram Tejani & Ors. v. Azeem Jagani**⁹, the respondent in appeal filed a suit claiming injunction, restraining the defendants from dispossession of the plaintiff from the suit premises. This Court held as under:

“14. Thus, a person holding the premises gratuitously or in the capacity as a caretaker or a servant would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequences. In the circumstances, the City Civil Court was right and justified in rejecting the prayer for interim injunction and that decision ought not to have been set aside by the High Court. We, therefore, allow the appeal, set aside the judgment under appeal and restore the order dated 29-4-2013 passed by the Bombay City Civil Court in Notice of Motion No. 344 of 2013 in Suit No. 408 of 2013.”

23. Now, advertent to the facts of the present appeal, the Respondent Nos. 1 and 2 – plaintiffs were permitted to stay in the old age home subject to certain payments to meet the necessary expenses of food and minor medical care. The possession of the respondent nos. 1 and 2 in a room of an old age home is that of a licensee permitted to enjoy the possession, but without creating any interest in the property. The appellants found the behavior of respondent nos. 1 and 2 not conducive to the fellow inmates and the staff of the old age home. This Court will not exercise a judicial review about the opinion of the appellants. On the legal issue, respondent Nos. 1 and 2, as licensees have a legal right to stay in the room of the old age home only so long as they comply with the terms and conditions of such license. Since respondent Nos. 1 and 2 had no legal right to protect their possession without complying with the corresponding obligations, as their possession is not a legal possession but only a permissive possession, they cannot seek any injunction to restrain the management of the old age home not to dispossess them.

24. It is an unfortunate situation when the parents cannot be taken care of by the children, but the fact remains that abandonment of parents by their children is now a hard fact of life. Parents do find it difficult to reconcile the situation that at that age they have to stay in old age home. Therefore, one can understand the mental trauma which the

⁹ (2017) 2 SCC 759

parents face in the evening of their life but the agony suffered by a parent cannot be a cause of disturbance to the other inmates or to the organizers who have resolved to take care and run the old age home. The inmates in the old age home are licensees and are expected to maintain a minimum level of discipline and good behaviour and not to cause disturbance to the fellow inmates who are also senior citizens. Therefore, if one parent is the cause of disruption of peace of other inmates in the old age home, the administration of the old age home is at liberty to terminate the license and ask the inmate to vacate the room allotted to them. Even if the organizers of the old age home are not able to meet the expectation or requirements of the plaintiffs, that would not confer a cause to the plaintiffs to disturb the other inmates. As a licensee, the plaintiffs have no right to stay in the accommodation allotted which is purely an approach to a human problem faced by the people in old age. The plaintiffs have even been offered alternative accommodation as well.

25. As a licensee, the plaintiffs cannot seek an injunction to stay in the old age home unless they allow other inmates, a peaceful co-existence. Therefore, we find that the injunction granted by the High Court suffers from patent illegality. Therefore, the injunction granted by the High Court is not warranted in law.

26. The appellant shall arrange an alternative old age home for respondent nos. 1 and 2, as one offered by the Social Welfare Department.

27. However, we observe that it is open to the Municipal Corporation or the Social Welfare Department to examine the living conditions of the inmates in the old age home so that the inmates live in as comfortable conditions as are possible at that age.

28. We also direct the Uttar Pradesh State Legal Services Authority to depute a para-legal volunteer to visit the old age home on such intervals as is possible and the Member Secretary of the District Legal Services Authority to visit the old age home at least once a month initially to find out the difficulties being faced by the inmates and to take redressal steps, including to provide legal aid if required by the inmates of the old age home.

29. With the aforesaid directions and liberty, the present appeal is allowed and ad-interim injunction sought by the plaintiffs–respondents stand dismissed.