

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10426-10427 OF 2013
(Arising out of SLP (C) Nos. 22473-22474 of 2013)

Leela Shashikant Purandare

....Appellant

versus

Arvind Vishnu Govande (dead) through L.Rs.

....Respondents

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted.

2. These appeals are directed against judgment dated 30.4.2013 of the learned Single Judge of the Bombay High Court whereby he dismissed the second appeal and the civil application filed by the appellant and upheld judgment and decree dated 31.12.2012 passed by District Judge, Pune (for short, ‘the lower appellate Court’) in Civil Appeal No.325/2012 confirming judgment and decree dated 18.2.2012 passed by Civil Judge (Junior Division), Pimpri (for short, ‘the trial Court’) in Regular Civil Suit No.614/2000 filed by respondent - Arvind Vishnu Govande, who is now represented by his legal representatives, for declaration and

possession of the suit property.

3. After obtaining the degree of M.Tech. from Indian Institute of Technology, Kharagpur, the respondent started working as Engineering Consultant. In 1979, he purchased Plot No.W-97, Bhosari Industrial Area, Pimpri (the suit property) on lease basis from Maharashtra Industrial Development Corporation (MIDC) by registered deed dated 24.10.1979. After taking possession of the suit property, the respondent obtained water supply and electric connection in his name. In 1988, the appellant and her relative (brother, viz., Subhash Anant Kogekar) are said to have approached the respondent for permission to use the suit property for lunch and dining purposes of their employees. The respondent agreed to their request. After few months, the appellant started using the shed constructed over the plot for manufacturing activities and also made structural changes/modifications without his knowledge and consent. On coming to know of this, the respondent sent letter dated 6.6.1990 to the appellant by Registered A.D. and called upon her to immediately stop the manufacturing activities and desist from making any structural changes. He also asked the appellant to vacate the shed and the premises. The appellant refused to accept the letter. She also did not respond to letters dated 6.11.1990, 7.11.1990 and 30.11.1990. The respondent then approached the Executive Engineer, MIDC and the concerned officer of Maharashtra State Electricity Board (MSEB) for disconnection of water and electricity supplies. The electricity was disconnected on 15.1.1991 and the meter was removed. Thereupon, the appellant filed Suit (RCS No.101/1991) against MSEB without impleading the

respondent as party and sought injunction against disconnection of the supply of electricity. On an application made by the respondent, the trial Court ordered his impleadment as defendant in RCS No.101/1991. That suit was finally dismissed by the trial Court vide order dated 8.2.1993.

4. Since the appellant did not vacate the suit property, the respondent filed Special Civil Suit No.1634/1993 (re-numbered as Regular Civil Suit No.614/2000) for possession and award of compensation at the rate of Rs.500 per day with interest. He pleaded that the appellant was neither his partner in the business nor a licensee of the suit premises and she was unauthorisedly occupying the same; that he had given the suit property to the appellant and her relative for lunch and dining purposes of their employees but she started using the same for manufacturing activities and also made structural changes without his knowledge and consent and without permission and that she did not vacate the suit premises despite repeated requests.

5. In the written statement filed by her, the appellant averred that the suit property is not owned and possessed by the plaintiff-respondent alone and that she was in possession thereof as partner of Active Engineers and this fact has been concealed by the respondent. The appellant denied that she or her relative approached the respondent for permission to use the suit property for lunch and dining purposes of their employees or that she started using the same without the former's knowledge and consent for manufacturing activities and that she had made structural changes. The appellant claimed that the respondent was carrying on

business of sale and manufacturing of engineering and chemical items in the name and style of M/s. Active Engineers in partnership with her husband Shashikant Mahadeo Purandare and after his death on 1.11.1988, the respondent offered to admit her as partner and to form a new partnership. She accepted the offer and a partnership deed was executed by them on 23.11.1988; that in terms of the partnership deed, the main office of the partnership was located in the suit property, which was treated as the respondent's investment in the partnership; that she had agreed to invest Rs.1,25,000 towards capital and the profit ratio between the partners was to be 51% and 49%; that she spent Rs.1,25,000 for construction of factory shed and commenced business; that the respondent sent letter dated 10.12.1988 to the Shop Inspector about the change of partnership and registration was also made under the Sales Tax Act in the name of M/s. Active Engineers, and that at the time of allotment, there was a factory shed admeasuring about 600 sq. ft. and she made additional construction of about 800 sq. ft. She also constructed mezzanine floor in the factory and installed furniture and fixtures by spending Rs.3,00,000. The appellant also raised an objection to the maintainability of the suit on the ground that the partnership is not registered. She finally pleaded that the respondent cannot seek her eviction unless he settles all the disputes and gets the partnership dissolved.

6. On the pleadings of the parties, the trial Court framed the following issues:

“ISSUES

1. Does plaintiff prove that the suit plot was allotted to him alone by MIDC to run his factory?
2. Does the plaintiff further prove that on the request of defendant and her relatives he allowed the defendant to make use of W-97 plot for lunch and dining purposes of her employees?
3. Does plaintiff further prove that the defendant was asked to vacate the premises and asked to give the possession?
4. Whether the plaintiff is entitled for declaration as prayed and possession of the suit premises?
5. Does the defendant prove that she is partner along with plaintiff and suit plot was allotted and purchased by the firm and she has share in the plot as partner?
6. Whether defendant is entitled for compensatory cost of Rs.5000/-?
7. Whether the plaintiff is entitled for compensation of Rs. 500/- per day from the defendant from the date of filing of the suit till the disposal of the suit?
8. What relief and cost?"

7. The respondent examined himself as PW-1, Rajaram Tukaram Bhujbal, an employee of MIDC, as PW-2, Senior Clerk Tax Assistant of Pimpri Chinchwad Municipal Corporation as PW-3 and produced documents, which were marked as Exhibits P-52, 54, 55, 56, 57, 63, 64, 65, 72 and 73.

8. The appellant did not enter the witness box. Instead, her brother and power of attorney holder Subhash Anant Kogekar filed affidavit dated 8.9.2008 (Exhibit 210). He also produced documents which were marked as Exhibits 91 to 107, 112 to 161 and 213 to 216. Sanjay Vishwanath Salunkhe, an employee of Cosmos Bank, Khadki Branch was examined as DW-1. Shri Salunkhe produced certified copy of Account Opening Form, which was marked as Exhibit 244. Shri

Ravmdra Vasantao Kakade, handwriting expert was examined as DW-3. He produced his opinion as Exhibit 254.

9. After analyzing the oral and documentary evidence produced by the parties, the trial Court decided all the issues in favour of the respondent and decreed the suit. The trial Court held that the respondent has succeeded in proving the allotment of suit property to him by MIDC and decided issue No.1 in the affirmative. While dealing with issue Nos. 2 and 3, the trial Court referred to the admission made by Subhash Anant Kogekar that the plaintiff-respondent had issued letter dated 6.6.1990 for delivery of possession and held that the respondent had allowed the relatives of the appellant to use the suit property for lunch and dining purposes but she used the same for manufacturing activities and also made structural changes without his consent. The trial Court rejected the appellant's plea that the respondent had executed partnership deed dated 23.11.1988 inducting her as partner and she had made investment. The findings recorded by the trial Court on these two issues are extracted below:

“Though the defendant has specifically pleaded in WS that deed of partnership dated 23/11/88 was executed. The defendant failed to prove the existence of partnership firm by producing registered partnership deed on record. The partnership deed produced on record by the defendant are not registered documents as per Section 17 of Indian Partnership Act. The documents of partnership is compulsorily registerable. Section 6 of Indian Partnership provides mode of determining existence of partnership. It is specifically provided in this section that mere sharing of profit or payment of contingent does not make a person partner of the firm. As per section 69 of Indian Partnership Act no suit to inference any right arising from contract shall be instituted by or on behalf of any person suing as partner in the firm against the firm or any person alleged to be or to have been partner in

the firm unless the firm is registered. In the present suit, the partnership deed, produced on record is unregistered partnership deed. The plaintiff has categorically denied the existence of relation of partnership between him and the defendant in her cross-examination. In such situation, in view of the provisions of section 69 of the Partnership Act the defendant is not entitled to raise plea that she is in possession of the suit property as a partner of M/s, Active Engineers i.e unregistered firm. It is pertinent to note here that during cross examination the defendant's power of attorney holder Mr. Subhash Kogekar has deposed that neither himself nor the defendant have executed any registered document in respect of the suit property. It is pertinent to note here that the defendant herself has not stepped into the witness box and has not lead oral evidence. In such a situation, the evidence given by D.W. I Subhash Kogekar as power of attorney holder of the defendant is restricted to the facts which are within his personal knowledge. In such situation, in absence of registered partnership deed the defendant has failed to prove that she is in possession of suit property in capacity of partner of M/s. Active Engineers i.e. the alleged partnership firm between the plaintiff and defendant. The defendant has produced on record electricity bills at Exh.112 to 161, receipt of Municipal Taxes at Exh 215, 99, 103, 104, 105, 106, 107, 216 and notice issued by PCMC in payment of Municipal Taxes Exh.100, 101. In all these documents i.e in Municipal Tax receipts and notice issued by PCMC the name of M/s. Diamond Engineers and Fabrications is shown as possessor of the suit property. As per the defendant's contention the plaintiff and defendant were carrying on alleged partnership business in the name of M/s. Active Engineers. In such situation, onus shifts to the defendant to explain how the firm M/s. Diamond Engineers and Fabrication is shown as possessor of suit property. So far as the electricity bills are concerned they stand in the name of the plaintiff. It is also pertinent to note here that, merely because the defendant or M/s. Diamond Engineers and Fabricators are paying the Municipal Taxes and Electricity charges that in itself does not create any right, title, interest in their favour in respect of the suit property. The defendant examined Sanjay Salunkhe an employee of Cosmoss Bank, branch Khadki as P.W.I at Exh.242, he has produced account opening form dated 04/01/1986 of account of M/s. Active Engineers at Exh. 244, D.W.2 Sanjay has deposed that the Form Exh. 244 bears signature of the plaintiff Arvind Govande and Shri. Shashikant Purandare. But in the cross examination he has deposed that while opening an account the photograph of account holder is obtained on account opening form but no such photograph of plaintiff is affixed on Exh.244. This witness has further deposed in the cross examination that the bank never demanded residential proof, photograph, and pan

number from the plaintiff. The bank never-issued any letter to the plaintiff for producing registered partnership deed and lease deed of suit property. In such situation, merely because an account opening form for the account of M/s. Active Engineers is produced on record it cannot be said that the plaintiff had entered into partnership and had applied for opening of account of partnership firm. As it is already discussed above, the evidence required for proving existence of relation of partnership is production of registered partnership deed in its absence the evidence given by the bank employee regarding opening account in the name of partnership firm is not-proper and sufficient.”

Issue No.4 was decided by the trial Court in the affirmative and issue No.5 was decided in the negative by making the following observations:

“As I have already discussed above, that the plaintiff has proved that the defendant and her relative had requested him to allow the defendant to use the suit property for lunch and dining of defendants employees and the plaintiff had called the defendant to vacate the suit property vide letter dated 07/11/1990 at Exh. 54 and 30/11/90 at Exh. 55. The defendant has failed to prove that she is in possession of suit property in the capacity of partner of M/s. Active Engineers. In such situation, as the defendant is holding the possession of suit property in spite of request of the plaintiff to vacate the suit property the defendant is trespasser in the suit property. Therefore, the plaintiff is entitled to get relief of declaration that the defendant is trespasser of the suit property and is illegally occupying the suit property. The plaintiff is also entitled to receive the possession of suit property. The defendant has failed to prove that she is plaintiff’s partner and the suit property was allotted and purchased by the firm and thereby she is having any right, title, interest in the suit property. Hence, I answer issue no. 4 in the affirmative and issue no. 5 in the negative.”

10. The lower appellate Court independently analysed the evidence produced by the parties including the admissions made by Subhash Anant Kogekar and held that the appellant has failed to prove the opening of joint account by her husband and the respondent in Cosmos Bank in the name of partnership and, in any case, mere opening of account in the name of M/s. Active Engineers is not

sufficient to establish that respondent had entered into partnership with the appellant's husband, which was followed by execution of partnership deed dated 23.11.1988 with her. The lower appellate Court also referred to the statement of PW-2 Rajaram Bhujbal that permission of MIDC is necessary for running business or for making construction over the suit property and held that in the absence of required permission neither any business could have been started in the suit property nor construction could have been made on it. As regards the payment of municipal taxes, the lower appellate Court noted that the receipts were issued in the name of M/s. Diamond Engineers and Fabricators and observed that if the business was being carried on in the name of Active Engineers how M/s. Diamond Engineers and Fabricators could have been shown as owner of the suit property. All this is evinced from paragraph 15 of the judgment of the lower appellate Court, which is extracted below:

“It has come in the evidence of Rajaram Bhujbal (PW-2) that the plot is allotted to the Respondent-Plaintiff by Lease Agreement dated 24-10-1979, He further stated that partnership is required to be registered and they are not accepting' unregistered partnership. He further stated that in their record there is no any document to show that Respondent-Plaintiff entered into any partnership with any other person. Moreover, Rajaram Bhujbal (PW-2) in the course of cross-examination stated as per permission granted by MIDC, it is necessary to run business, and for partnership business, previous permission of the MIDC is necessary. However, there is nothing on record to show that Appellant-defendant or Shashikant Purandare applied for permission to run partnership business on suit plot. Moreover, it is also mandatory to obtain previous permission of MIDC to make any construction for running partnership business on the plot of MIDC. Subhash Kogekar (DW-1) power of attorney holder of appellant-defendant in the evidence stated that appellant-defendant or her husband are not admitted as partnership for running business on suit plot, therefore, no any permission of MIDC

was obtained for making construction on the suit plot. Moreover, Subhash Kogekar (DW-1) in the course of cross-examination admitted that he does not possess any documentary evidence to show that respondent-plaintiff had given possession of the suit plot. He further admitted that in agreement, suit plot stands in the name of respondent-plaintiff. He further admitted that on partnership agreements dated 22-10-1982 and 23-12-1988, there is no signatures of witnesses. All these documents given by Subhash Kogekar (DW-1) implicitly show that no any partnership deed came to be executed between respondent-plaintiff and appellant-defendant or her husband. Thus, contention of appellant-defendant that after death of her husband, respondent-plaintiff had given offer to her to admit as a partner and to form a partnership firm, is not acceptable at all. appellant-defendant failed to establish that she along with respondent-plaintiff, is running partnership business on the suit plot. On the other hand, contention of the respondent-plaintiff that he permitted appellant-defendant to utilize suit plot for lunch and dinning purpose of her employees, appears to be trustworthy one. Thus, respondent-plaintiff established that possession of the appellant-defendant over the suit plot was permissive. Hence I answer point No.1 in the affirmative and point No.2 in the negative.”

11. The argument of the appellant that even though the partnership was un-registered, the same ought to have been considered by the trial Court was rejected by the lower appellate Court by making the following observations:

“Appellant-defendant herself has not stepped into witness box. Appellant-defendant has examined Subhash Kogekar (DW-1) as her power of attorney holder. Subhash Kogekar (DW-1) in his evidence admitted that he himself or appellant-defendant have not executed any registered document in respect of the suit plot. From the admission, it is clear that no registered Partnership Deed came to be executed between appellant-defendant and respondent-plaintiff. Learned Counsel for the appellant-defendant submitted that Shashikant Purandare was a partner of M/s. Active Engineers along with respondent-plaintiff, and they have opened account in the name of M/s. Active Engineers, which shows that respondent-plaintiff and Shashikant Purandare were partners of M/s. Active Engineers. Sanjay Salunkhe (DW-2) in his evidence on oath stated that Account Opening Form of M/s. Active Engineers (Exh. 244) bears the signature of respondent-plaintiff and Shri Shashikant Purandare. However, in the course of cross-examination Sanjay Salunkhe (DW-2) stated that while opening account, photograph of

account holder is affixed on Account Opening Form. However, Account Opening Form (Exh. 244) shows that no such photograph of respondent-plaintiff is affixed on Account Opening Form. Moreover, it has come in the evidence of Sanjay Salunkhe (DW-2) that Cosmos Branch-Khadki never demanded residential proof and PAN number of respondent-plaintiff. In such circumstances, doubt creates about Form (Exh. 244). Moreover, merely because Bank Account is opened in the name of M/s. Active Engineers, itself is not sufficient to establish that respondent-plaintiff along with Shashikant Purandare entered into partnership and had applied for Opening of account of Partnership Firm. Moreover, Account opening (Exh. 244) does not bear signature of appellant-defendant. Moreover, municipal taxes, receipts and notice issued by PMC filed by appellant-defendant show that same are in the name of M/s. Diamond Engineers and Fabrications. As per contention of appellant-defendant, she along with respondent-plaintiff were carrying partnership business in M/s. Active Engineers. Then how M/s. Diamond Engineers and Fabrications are shown as possessor of the suit plot. Moreover, it is settled principle of law that merely paying taxes itself not confer any right of property.”

12. The second appeal filed by the defendant-appellant was dismissed by the learned Single Judge of the Bombay High Court, who held that no question of law much less any substantial question of law arises for consideration. The learned Single Judge relied upon the judgment of the Nagpur High Court in *Jamal Usman Kachi v. Firm Umar Haji Karim Shop* AIR 1943 Nagpur 175 and held that the appellant cannot rely upon the unregistered partnership deed for defending her cause in the suit. He distinguished the judgment of the Calcutta High Court in *Ajit Kumar Maity v. Narendra Nath Jana* AIR 1955 Calcutta 224 by making the following observations:

“As noted earlier, in the case before the Calcutta High Court, the defendants therein were not attempting to enforce their own rights but had set up a plea to defeat the plaintiffs claim. I am, therefore, of the opinion that on the facts, the decision of the Calcutta High Court is not applicable in the present case. Apart from that, perusal of Section 69

shows that bar is created under sub-sections (1) and (2) against the plaintiff for enforcing a right arising from a contract either on behalf of the firm against the third party or on behalf of any person suing as a partner in a firm against the firm or any person alleged to have been a partner in the firm unless the partnership is registered. The Nagpur High Court in the case of Jamal Usman (supra) observed that a claim of set-off may be a partial defence to a suit but a claim arising out of a contract may also be set up in defence to negative the right of suit altogether and it is that defence which is placed under the same disability as the right to bring a Suit at all insofar as unregistered firms are concerned. In my opinion, sub-sections (1) and (2) of Section 69 are required to be harmoniously construed with subsection (3) thereof. It cannot be said that the disability is created under subsections (1) and (2) of Section 69 only against the plaintiff from enforcing a right arising from the contract and disability is not created against the defendant. I, therefore, prefer to follow the view taken by Nagpur High Court in the case of Jamal Usman (supra).”

13. Shri Pallav Shishodia, learned senior counsel for the appellant relied upon Clause 6 of partnership deed dated 23.11.1988 allegedly executed between the appellant and the respondent and argued that even though the same was not registered, the trial Court should have declared that the suit property was part of the assets of the partnership firm and the appellant was entitled to a declaration that she has the right to continue in possession of the suit property till the dissolution of the partnership firm. In support of his argument, learned senior counsel referred to Section 69 of the Indian Partnership Act, 1932 and the judgment of this Court in Jagdish Chander Gupta v. Kajaria Traders (India) Ltd. 1964 (8) SCR 50 and of the Calcutta High Court in Ajit Kumar Maity's case. Shri Shishodia submitted that the judgment of the Nagpur High Court in Jamal Usman Kachi v. Firm Umar Haji Karim Shop (supra) is distinguishable on facts and even otherwise the same does not lay down the correct law.

14. Shri Amol Chitale, learned counsel for the respondents supported the impugned judgment and those of the trial Court and the lower appellate Court and argued that the appellant is not entitled to any relief because she could not prove execution of partnership deed dated 23.11.1988 and the two Courts had concurrently found that she was unauthorisedly occupying the suit property. Shri Chitale further argued that the finding recorded by the trial Court and the lower appellate Court on various issues were pure finding of fact and the High Court rightly declined to interfere with the same.

15. Before dealing with the rival contentions, we consider it necessary to observe that the appellant has not challenged the finding recorded by the trial Court and the lower appellate Court that the suit property was allotted to the respondent by MIDC on lease basis and the appellant had no privity of contract with MIDC.

16. We shall now consider the question whether the respondent had executed partnership deed dated 23.11.1988 with the appellant and she was in possession of the suit property as a partner.

17. In his evidence, the respondent categorically stated that the appellant is neither his partner nor a tenant nor a licenser and that she was in illegal possession of the suit property. The respondent denied the suggestion that he and the appellant's husband were partners of the firm M/s. Active Engineers and that she was inducted in the partnership business after the death of her husband. The respondent denied the execution of partnership deed dated 23.11.1988 and claimed

that the appellant had neither invested Rs.1,25,000 by way of capital nor spent Rs.3,00,000 for the construction of mezzanine floor and fixing of furniture. The respondent also denied that from 1982-1985, he was a partner of Shri Subhash Anant Kogekar in respect of the suit property and had done business with him and he had paid installments of the suit property to MIDC. He also denied the suggestion that a joint bank account was opened in the name of Active Engineers or that he had given authority to Subhash Anant Kogekar to operate the account of the firm.

18. In his examination-in-chief, which was in the form of an affidavit, Subhash Anant Kogekar stated that the appellant is in possession of the suit property as partner of M/s. Active Engineers. He denied having sought permission of the respondent for using the suit property for lunch and dinner of his employees and that he or his relatives started using the same for business purposes without the knowledge and consent of the respondent. Subhash Kogekar claimed that the respondent had business relation with him and did business in partnership from 1982 in the name and style of M/s. Active Engineers and that at his asking, the respondent entered into partnership with his brother-in-law Shri Shashikant M. Purandare w.e.f. 30.12.1985 for doing the business of sale and manufacturing of engineering and chemical items and further that after the death of Shri Shashikant M. Purandare, the appellant was inducted as a partner in the firm and fresh partnership deed was executed on 23.11.1988 for doing the same business. He then stated that the respondent had not paid taxes to Pimpri Chinchwad Municipal

Corporation and he had paid the dues as proprietor of M/s. Diamond Engineers and Fabricators. According to Shri Subhash Anant Kogekar, the respondent got the electricity supply disconnected sometime in 1995-96 and since then the appellant is doing business in the suit property with his help and the help of his concern, viz., M/s. Diamond Engineers and Fabricators. He also stated that the respondent had permitted the appellant to construct industrial shed on the suit plot for the partnership business. In paragraphs 12, 14 to 16, Shri Subhash Anant Kogekar made the following statements:

“12. I say that, upon formation of partnership firm, namely, Active Engineers, the plaintiff allowed and permitted defendant to construct the industrial shed on the suit plot to run partnership business. This defendant who invested his own fund by way of capital in the partnership firm. Out of these funds this defendant, with the help of her brother, Mr. Kogekar, i.e. myself got industrial shed constructed and this industrial shed and the land thereunder belongs to the partnership firm. However, in the record of M.I.D.C., the said suit plot was shown and recorded in the name of plaintiff as a lessee. Therefore, in absence of any lease deed or other document of transfer or assignment, executed by plaintiff in favour of partnership firm, the said plot continued to be shown in the name of plaintiff in MIDC and municipal corporation record.

14. I say that, after construction of factory shade, this defendant continued business activity on payment of all outgoings of factory premises out of income arrived from Active Engineers. As owner thereof the plaintiff did not object for discharge of this liability, to this defendant in connection of suit property.

15. I say that, the plaintiff had approached Shri Subhash Kogekar, Proprietor of M/s Diamond Engineers and Fabricators, that is myself, who is having the firm in front of the suit property and requested me to get all right, title and interest of plaintiff in the suit property and as the partner of active Engineers, assigned in the name of Subhash Kogekar. Shri Subhash Kogekar i.e. myself had paid substantial amounts to M.I.D.C, Pimpri Chinchwad Municipal Corporation etc., with respect to the suit property and for and on behalf of the plaintiff as well as for

and on behalf of M/s Active Engineers and upon negotiation and finalization the consideration. I, Shri Subhash Kogekar orally admitted to acquire all rights and interests of the plaintiff in the suit property from the plaintiff. I say that I as Shri Subhash Kogekar had paid the consideration for the same to the plaintiff as against all rights, title and interest of the plaintiff in the said property together with share as a partner of a partnership firm of active engineers.

16. I say that in consideration thereof, the plaintiff has executed power of attorney in my favour. However, the plaintiff even on accepting the consideration, avoided to execute the necessary documentation of transfer/assignment of suit property, in favour of Shri Subhash Kogekar. I say that the plaintiff, by entering the partnership with the defendant, got factory premises constructed out of the funds of the defendant. The plaintiff has received practically all his investment made by him regarding the suit property, and then he avoided to execute necessary deeds or documents to transfer or assign his right, title and interest in the suit property in favour of the said Shri Subhash Kogekar, i.e. myself. Now by taking advantage of inaction on the part of plaintiff in this regard, the plaintiff is making allegations of trespasser against the defendant. Thus the plaintiff deliberately and intentionally suppressed all these material fact from the Hon. Court and thereby the plaintiff has not come with clean hands before the Hon. Court in claiming the relief against this defendant. Hence, suit filed by plaintiff is liable to be dismissed.”

(reproduced from the appeal paperback)

19. In the cross-examination, which was conducted in four installments Subhash Anant Kogekar made the following admissions:

- i. That he had taken Shade No. W-113 on lease from MIDC in his personal capacity and was doing business in the name of M/s. Diamond Engineers and Fabricators.
- ii. That he and his sister, i.e., the appellant did not execute any registered document about the suit property.

- iii. That he and his sister are using the suit property.
- iv. That the suit filed by the appellant against the respondent was dismissed.
- v. That neither the appellant nor he obtained permission from MIDC for making construction on the suit property/structural changes though such permission is mandatory.
- vi. That vide letters dated 6.11.1990, 7.11.1990 and 30.11.1990, the respondent had demanded possession of the suit property from the appellant.
- vii. That there is no documentary evidence to show that he had asked the respondent to enter into partnership with Shri Shashikant M. Purandare or that after the demise of Shri Shashikant M. Purandare, the respondent had made an offer to the appellant to induct as partner in the business of the firm M/s. Active Engineers.
- viii. That the partnership deeds have neither been signed by the witnesses nor the same are registered either under the Partnership Act or the Registration Act.

In the third installment of the cross-examination (8.9.2010), Subhash Anant Kogekar made the following statements:

“I, Subhash Kogekar do only one business it is in the name Diamond

Fabrication India Private Limited. It is true to say that neither myself nor Leela Purandare possess any registered document to show that Plot no. W-97 was transferred in the name of Active Engineers. It is true to say that I have sent document Exh.85 dated 24/07/1985 to handwriting expert to verify whether or not it bears signature of the plaintiff. It is true to say that I have not produced any documentary evidence to show that I had submitted the document as per the reminder issued by PCMC dated 13/07/1995. It is true to say that I have not submitted any document to PCMC to show that Diamond Engineers are legal occupiers of plot no. W-97. I have produced a letter showing that the officers of PCMC had visited plot no. W-97. It is not true to say that only-some portion of plot no. W-97 is in possession of Diamond Engineers. It is true to say that I have not issued any letter to PCMC stating that the name of Diamond Engineers is wrongly recorded as occupier of W-97. It is true to say that I have not issued any letter or notice to PCMC through my Advocate. It is not true to say that the contents of letter issued by me Subhash Kogekar Exh.85/26 dated 16/08/1994 and Exh.85/30 dated 16/02/1998 are contradictory to each other and these documents are false, fabricated and imaginary. It is not true to say that Exh. 235 bears false seal of Diamond Engineers. It is true to say that in my written statement it is not mentioned that Diamond Engineers is legal occupier of Plot no. W-97. I am not aware about Exh. 55 hence there was no question of replying the same. (At this stage learned counsel for the plaintiff open the Envelop of Exh. 55) Now I am shown the letter issued by the plaintiff to Leela Purandare dated 30/11/1990. I have not received the said letter. It is true to say that neither myself nor plaintiff and defendant sent the necessary documents to MIDC for obtaining permission for Active Engineers. It is true to say that the test report of MSEB i.e. Exh. 96 is received on 31/08/1985. It is not true to say that there was no electric supply from MSEB to plot W-97 prior to 1986. It is not true to say that there was no 'business of manufacturing goods on plot W-97 prior to 1986. It is true to say that the electric supply to Plot no. W-97 is in the name of plaintiff A.V. Govande. Now I am shown certified copy of Exh. 1 of R.CS no. 101/1991 filed at Exh.57. It is true to say that the plaintiff was not party in the said suit. It is true to say that when the plaintiff made an application, he was made defendant in the said suit. It is true to say that I am using plot no. W-97. It is true to say that myself and defendant Leela Purandare are using plot no. W-97 without obtaining any written permission of MIDC. It is not true to say that I am using plot no. W-97 illegally and unauthorizedly. It is not true to say that I am using plaintiffs property without any authorization illegally since 1988. It is not true to say that I am deposing false. Re-examination.”

(reproduced from the appeal paperbook)

20. A careful analysis of the statements of the respondent, the power of attorney holder of the appellant and other witnesses examined by them shows that even though the appellant and the respondent had not entered into any agreement what to say of registered partnership agreement, the appellant and Subhash Anant Kogekar had taken possession of the suit property without obtaining permission from the respondent and raised construction without obtaining permission from MIDC and without getting the plan sanctioned. This conclusion is fully supported by the statement of PW-2 Rajaram Tukaram Bhujbal, who was employed with MIDC. PW-2 categorically stated that MIDC does not have any partnership deed of the respondent and any other person on their record and that no letter had been received from the plaintiff or any other person seeking permission for construction. In cross-examination, PW-2 also stated that permission of MIDC is required for doing partnership business. PW-3 Vishvanath Sadhu Wakhare stated that as per the tax assessment record, M/s. Diamond Engineers and Fabricators are registered as possessors of the suit property, though there is no document showing allotment of the suit property in favour of M/s. Diamond Engineers and Fabricators and that he had not seen any partnership document between the appellant and the respondent. In cross-examination, PW-3 disclosed that tax for the suit property was paid by M/s. Diamond Engineers and Fabricators.

21. Since the appellant had pleaded that the respondent had inducted her as partner in place of her husband and executed partnership agreement dated

23.11.1988 and she was in possession of the suit property as partner of the firm M/s. Active Engineers, the onus was upon her to prove all these facts. Both, the trial Court and the lower appellate Court concurrently held that the respondent had not entered into any partnership with the appellant and that she had unauthorisedly occupied the suit property and made construction for doing business. Both the Courts further held that the appellant could not prove the opening of joint account by respondent and her husband and that she was in possession of the suit property as partner of M/s. Active Engineers. These findings are pure findings of fact and are amply supported by this Court's analysis of the evidence produced by the parties. Therefore, we do not find any valid ground to interfere with the impugned judgment. In view of the above conclusion, we do not consider it necessary to decide the question whether the appellant could defend the suit filed by the respondent on the strength of the unregistered partnership deed dated 23.11.1988 allegedly executed between her and the respondent.

22. In the result, the appeals are dismissed with cost quantified at Rs.50,000. The appellant shall pay the cost to the legal representatives of the respondent within two months and hand over vacant possession of the suit property to the legal representatives on or before 31.3.2014. This would be subject to her filing an undertaking before this Court within a period of four weeks from today. During the intervening period, the appellant shall not induct any person in the suit property in any capacity whatsoever or alienate the same to any other person.

.....J.
[G.S. SINGHVI]

New Delhi,
November 19, 2013.

.....J.
[V. GOPALA GOWDA]

SUPREME COURT OF INDIA



JUDGMENT