

(1982) 01 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No's. 2528 to 2531 of 1978

Abdula Samad Makhadum Baksh Sheikh and etc.

APPELLANT

Vs

Sudha Anant Parakhe

RESPONDENT

Date of Decision : 30-01-1982

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2

Citation : AIR 1982 Bom 585 : (1982) MhLj 647

Hon'ble Judges : Tulpule, J

Bench : Single Bench

Advocate : A.C. Agarwal and Anita A. Agarwal, for the Appellant; C.G. Solshe, for the Respondent

Judgement

1. The four petitions raise common question of law and fact. The respondent is the landlord and owner of Houses Nos. 136 and 137 situated in the Railway Line area at solapur. The petitioners are tenants of the said premises along with others. The two houses which adjoin have in all amongst them seven tenants and seven tenements each occupied by a tenant.

2. The respondent purchased Houses No. 136 in a court sale on 23rd April 1969. Later House No. 137 was purchased under a deed in Feb., 1971. After thus purchasing the two houses, the respondent served upon the petitioners a notice to quit. That was on 3rd sept., 1971. That notice claimed possession on several grounds. It appears that in the meantime on 6th sept., 1976 the municipal corporation at solapur has served a notice u/s 264 of the corporations Act requiring the landlord-respondent to demolish the southern wall as it had become dangerous and was liable to fall. The respondent claimed possession on the ground that she required these premises for her bona fide personal occupation. She stated in the plaint that there are 30 to 32 persons in her family and that for want of accommodation they have to reside at different places at present, that the plaintiff herself is a tenant of another premises and the

members of the family of the plaintiff went to reside in that premises and for that purpose she reasonably and bona fide required the premises in suit. She has stated that notices were issued to five tenants of these premises out of seven. In addition another ground which was made out was that the plaintiff wanted to construct a new building and that she has made arrangements therefor. Unless the tenements are vacated she would not be able to construct a new building thereon.

3. The tenants resisted the suit. They denied that the plaintiff required the premises bona fide for her occupation. They also contended that there was no necessity for recovering possession for the purposes of demolition and compliance with the notice issued by the municipal corporation.

The trial court held that the plaintiff was entitled to a decree. It appears that during the pendency of these suits one of the tenants entered into a settlement with the plaintiff and surrendered possession. The plaintiff, therefore, is in possession at any rate of two rooms in the premise in question. The other four suits came to be decreed.

5. Appeals were carried by the unsuccessful tenants to the District court, Solapur, being civil Appeals Nos. 251 to 254 of 1975. The appellate court by its order dated 10th Jan., 1977 remitted the matter for recording evidence on the question of the dangerous condition of the suit premises and their immediate demolition "under the order of the Solapur municipal corporation". And directed it to return the finding also with the record.

6. After the finding was so returned by the trial judge, the learned II Extra Assistant Judge, Solapur who heard these appeals, held that the plaintiff-landlady required the premises reasonably and bona fide for her occupation and that they were also required for the purposes of being demolished as required by the local authority. In that view of the matter, he dismissed the appeals and confirmed the decree passed by the trial court. Aggrieved by those decisions and decrees the present petitions are filed.

7. In holding that the landlady required the premises bona fide for her occupation and that she also required them reasonably, the learned Extra Assistant Judge observed that the premises in question "seem to have been nominally purchased in the name of the respondent-landlady by her husband and husband's three brothers jointly". He also further pointed out that the husband of the plaintiff who was examined had stated that the four brothers had contributed in equal shares and that they have been residing separately in different houses. The learned judge observed that they are probably doing so for want of sufficient accommodation. He also further found on the basis of the evidence which was adduced that the four brothers "propose to construct a new building after demolishing the present dilapidated houses for their residence," that in this building they propose to construct four self-contained blocks for the use and residence of four brothers, that the brothers have jointly given money

and deposited it for the purpose of construction and have made all preparations therefor. The learned judge also found that the appellant-tenants seem to found that the appellant-tenants seem to have "no personal knowledge as to why and with what purpose the respondent's husband and his brother purchased the suit houses in the name of the respondent." He observed that there was no evidence adduced by these tenants in that behalf.

8. The record discloses that during the trial and pendency of these proceedings the northern wall of the suit house had fallen. It appears that the premises are not in a satisfactory state of repairs. Affidavits were also filed when these petitions came for hearing that the southern wall in respect of which a notice for demolition has been issued by the solapur municipal corporation and on the basis of which notice was issued and proceedings commenced was also demolished. It seems, therefore, to be clear that both the southern and northern walls of these premises have fallen leaving the intervening portion intact which is in the occupation of these four petitioners-tenants.

9. Shri Agarwal, who appeared for the petitioners, contended firstly that the cause of action on the basis of which the plaintiff-landlady had to claim possession on the ground that the premises are required for the immediate purpose of demolition as required by the local authority no more survives. The wall having fallen and the demolition achieved without requiring any of the petitioners to vacate, that ground on which possession was granted to the landlady-respondent no more survives and is not available to the landlady.

10. Shri Agarwal's second contention was that the courts below have come to an erroneous conclusion that the plaintiff-landlady required the premises reasonably and bona fide for her personal occupation on the basis of a case which was never made out in the suit. He referred to the plaint allegations and pointed out that it was nowhere stated in the plaint that she was a mere benamidar for the four brothers who had purchased the property in equal shares by their joint contribution. He further pointed out that the evidence was at variance with the allegations in the plaint. The plaint suggests as if it is the plaintiff's family which has about 30 to 32 persons. While that is not the fact. The four brothers including the plaintiff's husband and the four families have been staying separately in separate houses at separate places. They have ground up children and the tenor of the evidence suggests that they must have been living separately since a long time. If they are so staying separately, then it cannot be said that they were members of the plaintiff's family. The tenants were unaware that the property was purchased Benami in the name of the plaintiff by the four brothers jointly. The tenants were also unaware, as that was not disclosed, that it is for the combined families of the four brothers that the premises in question were claimed. In the absence of any pleading there could be no case made out by the defendant-tenant. Shri Agarwal made a serious grievance that the plaintiff could not succeed on a case which was never made out and never disclosed. He submitted that the statement in para. 7 of the plaint that the plaintiff wants to

construct a new structure in the premises is premises Is neither in compliance with sub-section (1) (hhh) of S. 13 of the Rent Act nor can utilized to assist the case of the plaintiff of her personal bona fide and reasonable requirement of the premises in question. He pointed out that no case under S. 13(1)(hh) was made out at all. There is no allegation as was necessary, no certificate has been produced, and there was no compliance with the provisions of sub-section (3-A) of S. 13 and no undertaking by the plaintiff. The case of the plaintiff, therefore, which has remained and which remains for consideration was only one of reasonable and bona fide requirement of the premises for herself. Shri Agarwal also pointed out that the learned appellate judge did not consider or deal with the plaintiff's case as one falling under S. 13(1)(hh) and only under S. 13(1)(g) and one u/s 13(1)(hhh). In the circumstances, he prayed that petitions be allowed, the decree passed by the court below be set aside and the suits of the plaintiff be dismissed.

11. The plaint allegations which are relevant are to be found and contained in paragraphs 4 to 7. We are not concerned with the allegations relating to alternative accommodation having been secured by the tenants as that does not seem to have figured at the time of the trial. The only two cases which survive and were agitated in the courts below were whether the premises were required for the purposes of immediate demotion thereof as ordered by a local authority and the plaintiff bona fide and reasonably required the premises in question. Those are paras. 4 and 6.

12. It is in paragraph 6 that the plaintiff stated what I have extracted earlier above, In para. 7 the plaintiff has referred to the construction which she wants to make in the suit premises. But it is significant to note that the plaintiff did not say in that para. That she wants to demolish the premises and construct new premises therein for the purposes of her own occupation and that is how she requires the premises in question reasonably and bona fide. I have referred to some argument that was tried to be raised behalf of the respondent on the basis of para. 7. It is concerned, and there was no alternative in view of the plaint allegations, that the plaintiff has not stated that she was a mere benamidar and the property was purchased by the four brothers including her husband. It was urged, however that the plaintiff had alleged in the plaint that there were 30 to 32 persons in her family, and that it was a matter of evidence as to how these 30 to 32 members in the family were. The three brothers, apart from the family of the plaintiff consisting of her husband and three children, together contributed for these 30 to 32 members of the family. It was conceded, however, that the plaint does not say that the families of the three brothers in addition to the plaintiff's family also require accommodation. It was not stated in what way their need would entitle the plaintiff to file the suit. Ordinarily, in view of the statements made and the evidence such a possibility could not be urged and could not arise for consideration.

13. Section 13, sub-section (1) uses the expressions "himself or by any person for

whose benefit the premises are held" and "a landlord shall be entitled to recover possession of any premises". The expression "him self " has been defined to mean not only the landlord alone but also his wife and children. It would cover the case of a family and all persons staying together including the dependants and other relations and also in certain circumstances a servant. A dependant may not be a member of the family. Never the less if he is staying with the landlord and is depending upon him he would be considered as a member of the family and one whose requirements will have to be considered in the expression "himself". Such a position does not exist in the present case. The evidence given by the plaintiff's husband clearly indicates that the four brothers have been statyin separately and the same must have been the position since a long time though the exact dates have not been given what he says is that they started living separately when they got married and when there were children the accommodation became insufficient. At the time of the evidence the total number of the members of the family from 32, as alleged in the plaint, came down to only 23 including children and family members of the other three brothers.

14. It is quite clear, therefore, that the case on which the plaintiff succeeded in the court below was never made out on the plaint allegation. In Janba Daulatrao Borkar Vs. Rajesh Kumar Ramjiwan Agarwal, following the decision in Ganpat Bapurao Bibekat Vs. Rameshwar Shalligram Pitambarwale and Another, , it was observed that a plaintiff must "place before the court all necessary details which are required for granting relief. A mere ipse dixit of the landlord that he requires the accommodation for his personal occupation is not enough, Unless the landlord gives such details, the tenant cannot expected to meet the case of the landlord. I had occassion in similar circumstances to observe as to what must be stated by the plaintiff in cases where he claims that he required the premises bona fide for his personal occupation. In sukhadeo v.Laxmibai 1979 mh LJ 545 I had observed, "It is not enough that this can be established (bona fide requirement) by a landlord by adducing evidence. The tenant has to meet such a case, and can only do so provided he is posted in advance as to what he has to meet". There it was a case of an application under the Rent control Order before the Rent Controller. But that does not make any difference as the principle is the same. There the application filed by the landlord was devoid of particulars and was bare. It was, therefore, held that the tenant was necessarily prejudiced. In the absence of such comparative data and material being available indicating as to how the landlord requires the premises bona fide for his personal occupation the tenant in meeting the case of the landlord would be gravely prejudiced and "it would permit a landlord to make out a case at the time of trial in any manner he liked, and the tenant would have no opportunity and occasion to meet such a case which is sprung in his face for the first time. This is exactly what has happened in the present case. The tenants were unaware that it was going to be the case of the plaintiff that she was mere benamidar. The tenants did not know that the premises were purchased by the four brothers jointly by their joint

income. They, therefore, held that property as tenants-in-common. The tenants did not also know that it is the requirement of these four families whose interest in the property was not disclosed at all and no claim on their behalf was made, that they are sought to be evicted. The same applies to the other allegations. In spite of this absence of pleadings and absence of any such case, the court below allowed the plaintiff to lead evidence on matters which were not pleaded. It is elementary in civil cases that no party should be taken by surprise and whatever case he has, has to be made out in the pleadings so that the defendant or the adversary has an adequate and reasonable opportunity to meet that case. In the absence of any such pleading the adversary would not be in a position to meet such a case. No case, which is not pleaded in civil cases, is or can be allowed to be made out by any amount of evidence. Such evidence has really to be ignored.

15. In view of this position it is really not possible to uphold the decrees passed in this case. Shri Solishe for the respondent contended that even if the plaintiff had not made out a case that the property was purchased by all the four brothers, at least so far as her family was concerned, viz., her husband and her two children, who are college going, were in need and their requirement ought to be considered. It is true that such a limited need of the plaintiff would have been required to be considered if the plaintiff would have come out honestly with a case of this kind. The essence of S. 13, sub-section (1) (g) is that the requirement must be bona fide. A bona fide requirement or need is an honest requirement. It can hardly be said that the plaintiff was honest in making these allegations and trying to support them by evidence about which there was not a whisper in the plaint. If the plaintiff had not been honest in making a disclosure of all the circumstances, details and particulars which were relevant and vital, then the plaintiff can hardly claim and request that the case should be considered as bona fide for her own personal occupation. Shri Solishe clearly conceded that the plaintiff's allegations cannot be stretched to being the suit under S. 13(1)(hh). HE, however, submitted that the plaintiff's case for possession on the ground that the premises were required for immediate demolition as ordered by the local authority will survive.

16. I am unable to think that there is any substance in this contention also. When the affidavits at the commencement of the hearing of these petitions were filed, Shri Solishe did not ask for any time and was prepared to go on with the petitions. The affidavits clearly show that the wall has been demolished. In the absence of any controversy of those statements, in the affidavit the southern wall must be held to have been demolished. IT is true that the affidavits do not say as to who demolished the wall. The requirement of the municipal corporation to demolish the southern wall has been fulfilled and, therefore, immediate cause of requirement of the terms for the purpose of demolition of southern wall no more exist. In the circumstances the ground u/s 13(1)(hh) is also no more relevant.

17. Lastly Shri Solishe referred to a decision reported in Mrs. M. Davidson

v.Asmakhatun (1966) 70 Cal WN 967, which is entirely inapplicable. The facts in that case and the instant case differ. There the entire family including mother and brothers (children of the mother) were staying together. Such a large family since was living together, it was held that the plaintiff was entitled to ask for possession on the ground that she required the premises reasonably and bona fide. I do not understand how that case is applicable to the facts of the present case.

18. The result is that the petitions have to be allowed. The decrees passed by the courts below set aside and the suits filed by the plaintiff-respondent dismissed. There will be no order as to costs of the suit. Rule absolute. No order as to costs.

19. Petitions allowed.