

(2000) 08 GUJ CK 0093

In the Gujarat High Court

Case No : Civil Revision Application No. 256 of 1987

Amrutlal J. Trivedi

APPELLANT

Vs

Smitaben B. Sheth

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 15, 29(2)

Citation : (2001) 21 GLH 449

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Kalpana J. Brahmbhatt, for V.P. Shah, for the Appellant; Y.N. Oza, for the Respondent

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—This is landlord's Revision u/s 29(2) of the Bombay Rent Act against non-concurrent Judgment and Decree passed by the lower Appellate Court.

2. The facts giving rise to this Revision are briefly as under:

The plaintiff - revisionist is the owner of 150 sq. yds. of land situated in Kankaria Town Planning Scheme No. 2, Final Plot No. 11 paiki. Kachcha construction existed on this plot bearing M.C. No. 957//B. The defendant No. 1 is the owner of this construction. The defendant No. 1 let out only open land for the purpose of motor repairing and that the same was not to be used for any other purpose. Monthly rent was Rs.250/- plus municipal tax and education cess. The defendant No. 1 ceased in dealing in motor repairing since April 1976 and had illegally sublet the suit premises to the defendant No. 2 and was getting Rs.1500/per month from the defendant No. 2. The defendant No. 1 also did not pay municipal tax amounting to Rs.45,000/-. Tenancy of the defendant No. 1 was determined by notice dated 5.8.1976. She did not vacate the land in dispute hence the Suit for her eviction was filed.

3. The defendant No. 1 resisted the Suit on the ground that the suit land was originally let out to Surendra Motor who had constructed tin shed resting on four walls and the said Surendra Motor had sold the shed to the defendant No. 1 with consent of the plaintiff. The plaintiff, however, let out only open land to the defendant No. 1. It is denied that the tenancy was created for carrying on motor repairing work on the tenanted land. Dispute of standard rent was also raised by the defendant No. 1, who pleaded that the standard rent should not exceed Rs.45/- p.m.

4. The defendant No. 2 in his written statement pleaded that he is not in possession of the suit premises and as such he had been unnecessarily joined in the Suit and the Suit deserves to be dismissed against him with costs.

5. Thereafter the plaintiff amended the plaint and alleged that the defendant No. 3 is the sub-tenant of the defendant No. 1 and the defendant No. 1 was getting monetary benefit of Rs.2100/- per month from the defendant No. 3.

6. The trial Court framed number of issues and on material issue, namely, on sub-letting it held that it was a case of illegal subletting by the defendant No. 1 to the defendants No. 2 & 3 and it was also transfer or assignment of interest of the tenant - in - chief - defendant No. 1 to the defendants No. 2 & 3. The Decree for eviction was therefore passed by the trial Court.

7. The defendant No. 1 preferred an Appeal against the Judgment and Decree of the trial Court. The Appeal was partly allowed. The Judgment and Decree of the trial Court granting the decree for possession against the defendants was set aside. Hence this revision.

8. Ms. Kalpana Brahmhatt for the Revisionist and Shri Y.N. Oza for the respondents were heard.

9. It is a case of non-concurrent finding on sub-letting recorded by the two Courts below. It has to be seen whether the findings recorded by the lower Appellate Court are in accordance with law or not. The question of sub-letting or transfer or assignment otherwise is not a pure question of law. It is a mixed question of fact and law and as such it has to be seen whether the evidence was properly appreciated for coming to the conclusion that it was not a case of sub-letting.

10. It has been argued by Shri Oza that it is a case of dual ownership hence the defendant No. 1 has not committed breach of any provision of the Bombay Rent Act and as such no decree for eviction could be passed. In his view, the view taken by the lower Appellate Court is perfectly justified and that the trial Court was in error in granting the decree for possession. Learned Counsel for the revisionist on the other hand contended that it is not a case where eviction was sought u/s 13(1)(e) of the Bombay Rent Act only on the ground of sub-letting, but that eviction was sought also on the ground of assignment or transfer of interest of the tenant in the open land and as such the Decree for eviction was

rightly passed by the Trial Court.

11. In order to appreciate the arguments regarding dual ownership in the land and super structure we have to see and keep in view that the question of ownership is foreign to a suit for eviction by landlord against the tenant under the Bombay Rent Act. u/s 13 what is contemplated by the Legislature is that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has done any of the acts mentioned in Sub-clauses (a) to (l) of Section 13(1) of the Act. It, therefore, postulates the relationship of landlord and tenant between the parties on the basis of which the landlord can file Suit for eviction of the tenant. The question of ownership is not to be decided in such Suit. Consequently the very concept of dual ownership loses its significance for the purposes of instant litigation.

12. It has to be seen whether the relationship of landlord and tenant between the plaintiff and the defendant No. 1 is established. Needless to say that this relationship was not denied by the defendant No. 1; rather it was admitted by the defendant No. 1 that she is tenant of the plaintiff of open land measuring 150 sq. yds. In face of this admission of the defendant No. 1 there is no reason to discard the evidence of the plaintiff. Thus, the relationship of landlord and tenant between the plaintiff and the defendant No. 1 is proved as well as admitted by the tenant.

13. The next question for consideration is what was let out to the defendant No. 1. On this point also there is no dispute between the parties that only open land was let out to the defendant No. 1. Super structure originally belonged to Surendra Motors which had sold it to the defendant No. 1 and thereby the defendant No. 1 became owner of the super structure. The concept of dual ownership at this stage is not to be confused. The tenant defendant No. 1 may be owner of the super-structure, but he is not landlord of the land over which the super structure was raised by her predecessor in title. Thus, on the facts of the case the plaintiff is owner landlord of the land in question whereas the defendant No. 1 is the owner of the super-structure. It is nobody's case that the super-structure was raised by the defendant No. 1 without consent of the plaintiff. On the other hand the plaintiff has admitted that the defendant No. 1 is the owner of super-structure.

14. It should not be forgotten that the land and the super structure co-exist together. There cannot be any concept of super-structure without land. Consequently if open land was let out and super-structure was raised by the outgoing tenant or by the defendant No. 1 it has to be seen whether the defendant No. 1 can sub-let illegally to other persons the super-structure so erected and the land over which the super structure exists. It is difficult to conceive that the sub-tenant can use and occupy the super-structure without using the land over which the super-structure exists. If this is so then it can be said that there cannot be use of super-structure without use of open land which was let out to the defendant No. 1.

15. It has been urged on behalf of the respondent, placing reliance upon Mrs. Dossibai N.B. Jeejeebhoy Vs. Khemchand Gorumal and Others, that in such cases the bar of Section 15 of the Bombay Rent Act will operate only in the way of letting of the land of which lease has been taken, but will not stand in the way of letting the building constructed on the land. In this case reference was also made to the case of Vinayak Gopal Limaye Vs. Laxman Kashinath Athavale, . Even if technically it is held that on the facts and circumstances of the case in view of the aforesaid cases bar of Section 15 will not stand in the way of letting, the building constructed on the land, it has to be kept in mind that eviction was sought u/s 13(1)(e) of the Bombay Rent Act which not only contemplates illegal sub-letting, but also contemplates eviction of the tenant if he has transferred or assigned in any other manner his interest in the whole or part of the premises. Transfer or assignment in any other manner would mean transfer or assignment other than by way of transfer of exclusive possession for valuable consideration which is "sine a qua non" of illegally sub-letting. Thus, there may be transfer of interest of the tenant in the land in some other way. Likewise there can be assignment of the interest in the tenancy in the demised premises in any other way other than illegal sub-letting.

16. In the lower Appellate Court the contention has been that there was no prohibition for sub-letting the super structure and that the so called sub-tenant is nothing, but a licensee of the land over which the super structure existed and for this reason also decree for eviction is not sustainable. It is difficult to accept this contention. Needless to say at the cost of repetition that only open land was let out to the defendant No. 1. If the defendant No. 1 has granted licence to the defendants No. 2 & 3 to enter the land and thereby occupy the super structure it means transfer or assign in any other manner interest of the tenant in chief in the demised premises, namely, open land. Similar view was taken by the Bombay High Court in Vasant Ramchandra Sharma v. Narayanibai Mulchand Agrawal 1972 B.L.R. 24. In this case the defendant No. 1 was tenant of the plaintiffs in respect of a plot of land on which he had built some construction. After expiry of his lease the defendant No. 1 let out this structure to other four defendants. The question was whether by inducting these defendants the defendant No. 1 rendered his tenancy liable to be terminated u/s 13(1)(e) of the Bombay Rent Act and on this question it was held that as none of the four defendants had become sub-tenants of the plot the plaintiffs were not entitled to succeed on the ground of unlawful sub-letting. The facts are almost identical in the case before me. Thus, in view of the above decision, the landlord is not entitled to a decree for eviction on the ground of illegal sub-letting. But in this very case the Bombay High Court proceeded to observe that in this case the landlord was entitled to get decree for possession u/s 13(1)(e) of the Act as it was established that the defendant No. 1 who was a statutory tenant, had unlawfully created licence with respect to the demised plot to the four defendants which was a transfer or assignment "in any other manner his interest" within the meaning of Section 13(1)(e) of the Bombay Rent Act. Applying this principle it

can be said that if the theory of licence granted by the defendant No. 1 to the defendants No. 2 & 3 in respect of the demised land is accepted in that case it can safely be held that induction of the defendants No. 2 & 3 in the super structure and consequent grant of licence to enter upon the demised open land is nothing, but transfer or assignment of interest in the tenanted land by the defendant No. 1 to the defendants Nos.2 & 3 which attracts subsequent part of Section 13(1)(e) of the Act and it renders the defendant No. 1 liable for eviction from the open land. As a consequence thereon the so called licensee the defendants No. 2 & 3 are also liable to be evicted because they have to go along with the tenant in chief from the land in Suit. In case the Decree for eviction is passed the defendant No. 1 will be at liberty to remove the super-structure from the land in dispute at her cost and expense and shall be bound to deliver vacant possession of the demised property, namely, open land measuring about 150 sq. yds.

17. In addition to this, if the concept of licence granted by the defendant No. 1 to the defendants No. 2 & 3 is accepted even then u/s 13(1)(ee) of the Act the defendant No. 1 is liable to be evicted.

18. Section 13(1)(ee) of the Act provides that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has after commencement of the Bombay Rent Act, 1953, given the whole or any part of the premises on licence by monetary consideration to any person without previous permission of the landlord. Monetary consideration for granting licence is established in as much as it is in evidence that the defendant No. 2 was paying Rs.1500/- to the defendant No. 1 and the defendant No. 3 was paying Rs.2100/- p.m. to the defendant No. 1. Thus, if the licence in respect of the open land in the tenancy of the defendant No. 1 was granted to the defendants No. 2 & 3 for monetary consideration and whole of the premises, namely, open land was so assigned or transferred under licence to the defendants No. 2 & 3, the defendants are rendered liable for eviction u/s 13(1)(ee) of the Act. There is no evidence that the defendant No. 1 granted licence to the defendant Nos.2 & 3 with the previous consent of the landlord.

19. For the reasons stated above I am of the view that the theory of dual ownership is hardly of any significance on the facts and circumstances of the case, and the tenant-in-chief so also the so called sub-tenants, assignee or transferee from the tenant in chief or licensee from the tenant in chief can not escape from decree of eviction. As such I am of the view that the view taken by the Lower Appellate Court is contrary to law.

20. The Revision is, therefore, succeeds and is hereby allowed. The Judgment and Decree of the lower Appellate Court are set aside and that of the trial Court restored. No order as to costs.