
(2011) 07 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition No. 2465 of 2011

Ashabai Dhole and Another	Vs	APPELLANT
Leela Warke and Others		RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 16, 25

Citation : (2012) 2 BomCR 304 : (2011) 5 MhLj 172

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : D.L. Dharmadhikari, for the Appellant; N.P. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J. 1. Rule, with the consent of the learned Counsel for the parties made returnable forthwith and heard.

2. The above petition takes exception to the judgment and order dated 7-1-2011 passed by the Appellate Court whereby the judgment and order of the trial Court dated 17-4-2006 came to be confirmed and resultantly, the decree of eviction passed against the petitioners was confirmed.

3. The respondents herein are heirs of one Rambhau Warke, who was the landlord of the tenanted premises in question. The said Rambhau Warke had let out the premises on rent to the petitioner No. 2 initially. It appears that the petitioner No. 2 thereafter allowed the petitioner No. 1 to reside in the tenanted premises. It appears that the petitioner No. 2 left the premises in the year 1998 and the petitioner No. 1 is continuing to occupy the said tenanted premises.

4. The respondents herein filed Regular Civil Suit No. 124/2001 to recover possession of the premises u/s 16 of the Maharashtra Rent Control Act, 1999. It was averred in the plaint that the petitioner No. 2, who was the defendant No. 1 in the said suit, had in contravention of the oral agreement and the Rent Act as

applicable to the State of Maharashtra, had sublet the tenanted premises to the petitioner No. 1. It was further averred that the subletting of premises was illegal as the consent of the landlord was not obtained before subletting the premises. It was further averred that the petitioners, who were plaintiffs, after getting the information that the said premises were sublet to the defendant No. 2, added her as a party in the array of defendants in Regular Civil Suit No. 1821/1998 filed by the plaintiffs for some other reliefs. The aforesaid averments are reproduced hereinabove in the context of the adjudication that took place upto the first Appellate Court.

5. Insofar as petitioner No. 1 is concerned, she filed her written statement as the defendant No. 2 in the said suit and claimed to be a tenant of the premises in question. The parties went to trial and the trial Court on the basis of the evidence held that the petitioner No. 2 had illegally sublet the premises to the petitioner No. 1 and recorded a finding to that effect. Insofar as bona fide need, which was the ground on which eviction of the petitioners was sought is concerned, the trial Court held that the respondents had proved their bona fide need and as regards hardship, the trial Court on considering the number of members of the respondents' family and their requirements, held that comparative hardship would be more on the plaintiffs, i.e. respondents herein rather than the defendants. This was on the basis that the petitioner No. 2 had shifted to his own premises and the trial Court was of the view that insofar as hardship is concerned, it need not be considered qua the petitioner No. 1. The trial Court by judgment and order dated 17-4-2006 accordingly decreed the suit.

6. Aggrieved by the decree passed by the trial Court dated 17-4-2006, the petitioners carried the matter in Appeal by filing Regular Civil Appeal No. 269/2006 before the District Judge, Nagpur. The said Appeal came to be disposed of on 3-10-2009. The decree insofar as bona fide need of the respondents was concerned, was confirmed. However, insofar as finding recorded by the trial Court that the petitioner No. 1 is the sub-tenant of the petitioner No. 2 was concerned, the said finding was set aside. The said decree, as confirmed by the first Appellate Court was challenged by way of Writ Petition No. 1308/2010 by the petitioners in this Court. This Court remanded the matter back to the first Appellate Court on the limited issue as regards the status of the petitioner No. 1 as the Appellate Court though having set aside the finding of sub-tenancy, had not recorded a finding as to in what capacity, the petitioner No. 1 was occupying the premises.

7. On remand, the first Appellate Court, by the impugned judgment and order dated 7-1-2011 has confirmed the decree passed by the trial Court dated 17-4-2006. The first Appellate Court has confirmed that the respondents have proved their bona fide need for the premises in question. The first Appellate Court has also confirmed that the comparative hardship would be more on the respondents rather than the petitioners, if the decree were not to be passed.

8. Insofar as status of the petitioner No. 1 is concerned, the Appellate Court

relying upon the earlier litigation between the parties and the orders passed therein came to a conclusion that the status of the petitioner No. 2 as a tenant has been confirmed in the earlier two proceedings, in which the orders passed have become final and binding and, therefore the said issue as regards the petitioner No. 2 being a tenant is concluded. However, the Appellate Court held that since petitioner No. 1 is claiming through petitioner No. 2, she is a "deemed tenant".

9. As indicated above, it is the said judgment and order passed by the first Appellate Court confirming the decree passed by the trial Court, which is impugned in the present petition.

10. Before advertng to the submissions made by the learned Counsel for the petitioners, it would be relevant to note that between the same parties, two earlier proceedings have already been prosecuted. The respondent landlords had filed Regular Civil Suit No. 1821/1998 for declaration and injunction against the petitioners on the ground that the petitioner No. 2 had illegally inducted the petitioner No. 1 and without permission of the respondents, both of them had started illegal construction in the suit property. It is pertinent to note that in the said suit, the petitioner No. 2 had taken a stand that he was not a tenant of the respondents and that there was no relationship of landlord and tenant. However, in the said suit, the petitioner No. 1 claimed to be a tenant of the premises. The trial Court had dismissed the suit and recorded negative findings on all issues including the issue as to jurisdiction except the issue of illegal construction. The matter was carried in Appeal by the respondents herein and the Appellate Court set aside the decree of the trial Court and on the basis of the documentary evidence, which was on record in the said case, held that the petitioner No. 2 was residing in the premises and that the petitioner No. 1 came into occupation later on. The decree of the Appellate Court went unchallenged and thus, has attained finality.

11. The next proceeding is Regular Civil Suit No. 311/2000 filed by the respondents for recovery of arrears of rent against the petitioners in the Small Cause Court. In the said suit, the stand taken was the same as was in the earlier suit. The trial Court recorded a finding that the petitioner No. 2 was in occupation of the, premises till 1991 and thereafter petitioner No. 2 inducted the petitioner No. 1 in the year 1998. The pleadings in respect of tenancy and subletting as also defence by the petitioners in the said proceedings were the same as in Regular Civil Suit No. 124/2001. In the said proceedings, first Appellate. Court categorically rejected the contention of the petitioner No. 2 that he was not a tenant in the suit premises and there was no relationship of landlord and tenant between the parties. Hence, insofar as jural relationship of the parties, i.e. respondents as landlords and petitioner No. 2 as tenant is concluded by the judgments in the aforesaid two proceedings. In fact, the first Appellate Court in the instant matter has recorded a finding that the said issue is no more res integra and in fact, is concluded by the findings recorded in the said two earlier

proceedings and same would, therefore, operate as res judicata between the parties.

12. It is sought to be contended by Shri D. L. Dharmadhikari, learned Counsel for the petitioners, that in view of the averments made in the plaint in the said Regular Civil Suit No. 124/2001 wherein the respondents have averred that the petitioner No. 1 has been illegally induced by the petitioner No. 2, the Small Causes Court would have no jurisdiction as the petitioner No. 1 would then be a trespasser and for whose eviction, appropriate proceedings ought to have been filed by the respondents. The learned Counsel would contend that the concept of the "deemed tenant" as evolved by the first Appellate Court does not fit within the concept of "deemed tenant" as envisaged by section 25 of the Maharashtra Rent Control Act, 1999. The learned Counsel would contend that since it has come on record that the petitioner No. 2 is admittedly not in occupation since the year 1998 and since finding of sub-tenancy of the trial Court has been set aside by the Appellate Court, the respondents ought to have taken recourse to the proceedings, which are available in law for eviction of a trespasser.

13. Per contra, it is submitted by the learned Counsel appearing for the respondents/landlords that the petitioner No. 1 has all throughout claimed that she is a tenant in the premises in question and it is in the said context that the first Appellate Court has held that the petitioner No. 1 is a "deemed tenant", who is claiming through the petitioner No. 2, who is the tenant of the premises. The learned Counsel would contend that the petitioner No. 1 never did once question the jurisdiction exercised by the Small Causes Court and if she were to question the jurisdiction, an appropriate issue would have been framed in that behalf. The learned Counsel would contend that merely because the Appellate Court has used the term "deemed tenant" qua petitioner No. 1, that would not give a right to the petitioner No. 1 to contend that since the said concept does not fit within the meaning of section 25 of the said Act, the respondents have to adopt appropriate proceedings for her eviction as a trespasser.

14. Having considered the rival contentions, in my view, the above petition is bereft of any merit. It is pertinent to note that though the respondents have averred in the plaint that the petitioner No. 2 illegally induced the petitioner No. 1, it is also pertinent to note that the petitioner No. 1 in her written statement has categorically asserted that she is a tenant in respect of the said premises. The trial Court on the basis of the said pleadings, had framed an issue and accordingly recorded a finding that the petitioner No. 1 is an illegal sub-tenant, who has been induced by the petitioner No. 2. However, the said finding was set aside by the first Appellate Court though the decree on the ground of bona fide requirement as passed by the trial Court was confirmed. However, since the first Appellate Court did not record a specific finding as regards the status of the petitioner No. 1, "this Court had remanded the matter back to the first Appellate Court for a de'novo consideration.

15. On such remand, the Appellate Court as can be seen from the impugned

order dated 7-1-2011 has considered the said issue and after adverting to the earlier proceedings between the two parties, has recorded a finding that the petitioner No. 1 has admittedly been inducted in the premises by the petitioner No. 2, who on account of earlier adjudication, is a tenant of the premises and, therefore, the petitioner No. 1 can be said to be a "deemed tenant".

16. In my view, though the first Appellate Court has used the term "deemed tenant", it would make no material difference and in the light of the earlier proceedings filed and the adjudication that has taken place in respect of the said two suits, the jural relationship between the parties, i.e. respondents as landlords and petitioner No. 2 as a tenant was concluded. The fact that the petitioner No. 1 is claiming through the petitioner No. 2 is not disputed. However, her case of being a tenant has been rejected by both the Courts below and since the petitioner No. 2, who was a tenant, was no more in occupation of the premises in question, the first Appellate Court, in my view, has rightly concluded that the decree passed against the petitioner No. 2 would equally bind the petitioner No. 1 and it would not be open for the petitioner No. 1 now to contend after taking a consistent stand throughout that she is a tenant, that in view of the finding recorded by the first Appellate Court she is deemed to be a trespasser and, therefore, appropriate proceedings would have to be adopted by the respondents for her eviction from the premises in question. In the teeth of the background of the litigation between the parties, wherein the issue as regards petitioner No. 2 being a tenant has already been concluded, the said argument, in my view, is not available to the petitioner No. 1.

17. Having perused the impugned orders dated 17-4-2006 and 7-1-2011 and having gone through the concurrent findings recorded by both the Courts below, in my view, no case for interdiction in the writ jurisdiction of this Court is made out. The writ petition is accordingly dismissed. Rule discharged. No order as to costs.

18. The learned Counsel for the petitioners Sri D. L. Dharmadhikari prays for time for vacation of the suit premises.

19. The petitioner No. 1 is granted time till 15th November, 2011 to vacate the premises in question on filing usual Undertaking on her behalf as also on behalf of her other family members by 27th July, 2011. If no such Undertaking is filed, the respondents would be entitled to execute the decree in accordance with law.