

(1983) 03 GUJ CK 0008

In the Gujarat High Court

Case No : Civil Revision Application No. 1135 of 1979

Bai Anupa Ganpat and Others

APPELLANT

Vs

Nareshchandra Laljibhai Patel

RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13

Citation : AIR 1983 Guj 207 : (1983) 2 GLR 1000

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Advocate : V.C. Desai, for the Appellant;

Final Decision : Allowed

Judgement

A.S. Qureshi, J.—This is a revision application filed by the petitioners who were the original obstructionists before the Execution Court, in the execution application No. 402 of 1976 in the Small Cause Court at Ahmedabad. A decree of eviction was passed against the judgment-debtor Bhaiyalal Tantoya who was the original defendant No. 1 in the suit. Defendant No. 2 in the said suit was Ganpat Tantoya, the younger brother of Bhaiyalal. Ganpat Tantoya died during the pendency of the suit. An application for bringing his heirs on the record of the case was filed beyond time and hence the same was rejected with the result that Ganpat Tantoya ceased to be a party in the suit and Bhaiya-lal alone remained as defendant against whom eventually a decree of eviction was passed on the ground of non-payment of arrears of rent. When the said decree of eviction was sought to be executed, the present petitioners who are the widow and minor children of the deceased Ganpat riled the obstruction application and contended that the said decree was not enforceable against them as Ganpat Tantoya who was the original defendant No. 2 had died during the pendency of the suit and his heirs who are the present petitioners were not brought on the record of the case in time. Consequently the eviction decree was passed against Bhaiyalal only. According to the present petitioners, Bhaiyalal had left the suit premises

long ago and had gone to reside at another place known as Khadawali Chawl in a different locality.

2. The present petitioners who are the obstructionists have taken up a contention that they are the lawful sub-tenants in the suit premises since a long time and that this fact was known to landlord who is opponent herein. They also contend that the landlord having accepted the rent from Ganpat, husband of petitioner No. 1 and the father of petitioners Nos. 2, 3 & 4, it is not open to the landlord to contend that they are not the tenants although the receipts were issued in the name of Bhaiyalal, the original tenant who to the knowledge of the landlord was residing elsewhere. The present Opponent has filed his affidavit and has been cross-examined on that affidavit before the Executing Court, One Hasmukhbhai, the brother of the landlord also has filed an affidavit and has been cross-examined in the execution proceedings. The said Hasmukhbhai has clearly admitted that the original tenant Bhaiyalal Tantoya has illegally sublet the suit premises to his brother Ganpat Tantoya and that the said Bhaiyalal had gone to reside in Khadawali Chawl near Marsdan Mill. Although the landlord himself has not very clearly admitted this fact that the original tenant Bhaiyalal had sublet the suit premises to his brother Ganpat but has asserted in his own affidavit that Ganpat was not his lawful tenant from which an inference can be drawn that although the landlord did not regard Ganpat as the lawful tenant but at the same time he does not specifically say that Ganpat did not reside in the suit premises at all. This assertion of the landlord is not totally inconsistent with the statement made by his brother Hasmukhbhai in his affidavit. Moreover, the fact that Ganpat was impleaded as defendant No. 2 in the original suit suggests that Ganpat must have been residing there with his family, otherwise there was no reason for the landlord to join Ganpat as defendant No. 2. The present petitioner No. 1 who is the widow of deceased Ganpat has said that at the time when she was married to Ganpat he was residing in the suit premises. The present petitioner No. 1 has stated before the Executing Court that she has been residing with her husband Ganpat since her marriage in 1952 and that Bhaiyalal had gone to reside in Khadawali Chawl before that. Hence it becomes quite clear that the deceased Ganpat was residing in the suit premises with his family at least since 1952 and that his brother Bhaiyalal in whose name the rent receipts were issued was residing at Khadawali Chawl. Hasmukhbhai in his affidavit dated 2-8-1978 states that he took over the work of collecting rent about 26 years prior to the date of his affidavit. Hence the said Hasmukhbhai had personal knowledge as to who was actually residing in the suit premises and for how long. There is no reason to disbelieve the evidence of the present petitioner No. 1 when she says that she has been residing in the suit premises since her marriage with her late husband Ganpat in the year 1952.

3. The Courts below seemed to have gone mainly by the fact that the rent receipts were issued in the name of Bhaiyalal and that Ganpat was not accepted as a tenant and hence the present petitioners who are the heirs of Ganpat have no tenancy rights in the suit premises. The Courts below have overlooked an

important fact that Ganpat was not a party before the Court and hence he had no opportunity to put up his case of sub-tenancy. Ganpat's heirs not being on the record, there is no decree of eviction against them although they were the persons in actual possession of the suit premises. Hence the present decree cannot be executed against them. The plaintiff hi not bringing the heirs of Ganpat on record within time, had taken calculated, considerable risk and the suit against the defendant No. 2 having abated the present decree cannot be enforced against the present petitioners. Therefore, the judgment and order of the Appellate Bench of the Small Cause Court at Ahmedabad will have to be set aside as also the order of the Executing Court rejecting the obstruction application of the present petitioners.

4. The present respondent although served has chosen not to remain present before this Court. Nevertheless, the judgments and orders of the Courts below have been carefully looked into as also the affidavits and the cross-examinations of the parties with a view to do justice between the parties.

5. In the result, the petition is allowed. Rule is made absolute with no order as to costs.