

(1980) 01 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 1805 of 1975

Budhmal Khushalchand and Another

APPELLANT

Vs

Bansilal Gulabchand Agarwal and Others

RESPONDENT

Date of Decision : 19-01-1980

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 5(11)

Citation : (1983) 1 BomCR 11

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : M.A. Rane and J.M. Baphna, for the Appellant; S.R. Rajaguru, for respondent Nos. 1 to 3 and R.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—This petition by the original plaintiff is directed against the decree passed by the learned Assistant Judge, Dhulia, in Civil Appeal No. 6 of 1973 from decree dated 23rd November, 1972 passed by the trial Court in Regular Civil Suit No. 387 of 1970.

2. Original proceedings were under the Bombay Rents, Hotels and Lodging Houses Rates Control Act, 1947. The suit premises were originally leased to one Gulabchand Agarwal, who died sometime in 1965-66 leaving behind him three sons Bansilal, Rupchand and Javarilal. Plaintiffs filed the instant suit against said three sons for possession of the suit premises on the ground of arrears of rent and also on the ground that the heirs were not entitled to the tenancy right as provided under the provisions of the Bombay Rent Act. The suit was decreed.

3. Appeal against the said decree by the original defendant No. 3, Bansilal, was partly allowed by the learned Assistant Judge. In appeal, the suit for possession was dismissed, standard rent of the suit premises was fixed at Rs. 12.58 per month plus education cess payable according to law. Hence this petition under Article 227 of the Constitution.

4. Hearing the submissions of the respective Advocates and going through the judgments of the two courts below, I find myself unable to take any different view of the matter than the one taken by the learned Assistant Judge. Undisputed position is that Gulabchand was a contractual tenant of the suit premises at the time of his death. If so, consequence must follow that the heirs of Gulabchand would be entitled to inherit and succeed to this contractual tenancy. He consequently was also entitled to protection under the Bombay Rent Act. This inheritance of contractual tenancy did not depend upon whether Bansilal actually did or did not reside with his father Gulabchand, the original tenant, in the suit premises. There was no provision in the Rent Act contrary to such inheritance. Indeed the Rent Act provides additional protection to those residing as members of the tenant's family at the time of his death. The provision of section 5(11)(c) of the Bombay Rent Act covers a much wider field than the restricted field of inheritance under the general law. The other ground for possession, viz., arrears of rent, has also been properly considered and correctly decided by the learned Assistant Judge. I find no error of law nor any error apparent on the face of the record.

5. In the result, this petition fails and the same is dismissed. Rule earlier issued stands discharged but, in the circumstances, with no order as to costs.