
(2002) 07 BOM CK 0133

In the Bombay High Court

Case No : Writ Petition No. 5503 of 1995

Dalpat Ganpat Koli and Others

APPELLANT

Vs

Ganesh Dattatraya Kerhalkar

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13
Constitution of India, 1950 — Article 226, 227

Citation : (2004) 106 BOMLR 35

Hon'ble Judges : Naresh H. Patil, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Naresh H. Patil, J.—The petitioners are the original defendants and the respondent is the original plaintiff.

2. The brief facts of the case are summarised as under :

The plaintiff had filed civil suit for possession of the premises and the recovery of arrears of rent, regarding the premises which were situated in the municipal limits at Raver, District Jalgaon bearing C.T.S. No. 760. The original defendant Ganpat Dagadu Koli was tenant of the suit property. The plaintiffs' case is that in the year, 1949, he had let out the suit premises to Ganpat Koli with a condition that he would occupy the suit premises and in exchange supply him milk. In consideration of the supply of milk, the original tenant Ganpat Koli was to enjoy the extreme western end of the suit premises. Ganpat Koli had occupied the premises and was using the same. He expired in the year, 1960. He neither kept up the promise nor he handed over the possession of suit premises to the plaintiff. After demise of Ganpat Koli, the defendants were residing in the suit premises without any agreement executed between themselves and the plaintiff. The plaintiff did not give permission to the defendants to occupy and enjoy the suit premises. The wife of Ganpat Koli namely, Sakhabai had also expired in the year, 1982 who was occupying the suit premises. The plaintiff had demanded

possession of the suit premises from the defendants. They failed to hand over the vacant possession. Therefore, the plaintiff had filed civil suit which was numbered as R.C.S. No. 126/1963 and 17/1968 for fixing standard rent. The standard rent was fixed at Rs. 17.80. The defendants were not regular in payment of monthly rent. The rent was outstanding against the defendants. The defendants failed to pay the property tax inclusive of education cess.

3. On 22nd January, 1986 a notice was issued to the defendants demanding vacant possession. The defendants replied the notice and denied the contentions of the plaintiff. The plaintiff filed a suit for arrears of rent for the period from 1.12.1975 to 31.1.1986 and the property tax and educational tax. It was specifically contended by the plaintiff that the wife of Ganpat Koli died in the year, 1982 and since then, the suit premises were locked. It was in a non-use condition. It was not used for a period of more than six months from the date of filing of the suit. The plaintiff had contended that he required possession of the suit premises for his bona fide use. The plaintiff is put to hardship. It was contended that the defendant No. 1 owns and possesses two houses in the locality of Raver town, bearing C.T.S. No. 1427/B and 1427/A/2. Both the houses are well equipped and hence, the defendants were not in need of tenanted premises.

4. The defendants had filed written statement and denied the contentions of the plaintiff. It was the case of the defendants that the suit premises were allotted to them in the year, 1949. The agreed rent was Rs. 17.50. Dalpat Koli was the tenant of the suit premises. In this way, the legal heirs of original tenant are enjoying the property as tenants from their ancestor. All taxes were included in the rent. The defendants were regular in payment of rent. On refusal by the plaintiff, the defendants had sent the amount of rent through Money Orders. All the Money Orders were refused by the plaintiff. The suit property was in good condition. The plaintiff was not in need of the suit premises and there was no bona fide requirement for his personal use. It was alleged that the plaintiff did not maintain the suit property in proper condition.

5. With these pleadings, the Trial Court framed twelve issues and out of those, issues which are material at Nos. 4, 6 and 7 are reproduced as below, with findings :

(4) Does the plaintiff prove that the suit premises have not been used without reasonable cause for the purpose which they were let, for a continuous period of six months immediately preceding the date of the suit? Yes.

(6) Does the plaintiff prove that he requires the suit premises for reasonable and bona fide occupation?

Yes.

(7) Does the plaintiff prove that the defendant No. 1 has acquired vacant possession of the suitable residence having city S. No. 1427/B and 1427/A/2?

Yes.

6. The Civil Judge, Junior Division, Raver, by judgment and order dated 30.6.1992, decreed the suit for possession only, with costs.

7. The defendants preferred an appeal to the District Court at Jalgaon. The said appeal was numbered as Civil Appeal No. 177/1992. By judgment and order dated 5.10.1995, the Additional District Judge, Jalgaon partly allowed the appeal. The finding on Issue No. 6 recorded by the Trial Court, was recorded in negative. The appeal, on the rest of the issues, was dismissed and decree for possession passed by the Trial Court was upheld.

8. The Appellate Court, had framed five points for consideration, out of them, point Nos. 1, 3 and 4 which are relevant are reproduced below, with the findings on the said points :

(1) Whether the suit premises is required by the plaintiff reasonably and bona fide as alleged?

In the negative.

(3) Whether it is proved that the defendant No. 1 has kept closed the suit premises for more than six months immediately preceding to filing of the suit?

In the affirmative.

(4) Whether the defendant No. 1 has acquired vacant and suitable accommodation with him as alleged?

In the affirmative.

9. The Appellate Court had negated the point of bonafide requirement of plaintiff. But, had answered in affirmative the points regarding non user of the suit premises for more than six months immediately preceding the filing of the suit and acquisition of suitable accommodation by the defendant No. 1.

10. The learned Counsel appearing for the petitioner contended that both the judgments and orders impugned in the petition are against the evidence on record and are erroneous and perverse. The Courts below ought to have framed issue of subject matter of the suit for eviction. In his submission, the suit, for eviction was filed regarding an open plot and hence, for eviction of the defendants from occupation of the open plot, no suit under the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act) could be filed by the plaintiff. It was admitted that though such a plea was not raised by the defendants in the Lower Court, this being a mixed question of law and fact, the defendants are raising it for the first time before this Court. The Lower Court failed to consider the import of Order VII of the Code of Civil Procedure, 1908 in appreciating the pleadings of the plaintiff. The Courts below did not address on the vital issue as regards what was the suit, premises which was let out to the original tenant. As this goes to the root of the

matter, the impugned judgments and orders deserve to be quashed and set aside.

11. Shri Patil, learned Counsel for the plaintiff submitted that the suit has to proceed on the basis of the pleadings, issues involved and as determined in the Court below. He laid stress on the provisions of Order XIV of the Code of Civil Procedure, 1908 to lay emphasis on the point. He has argued that, it was not an open plot which was let out to the defendants. Relying on the pleadings, he submitted that there was a 10 ft. x 10 ft. shed in the tenanted premises having an open space around the shed which was surrounded by a boundary wall. The open space was thus, a part of the same premises having a shed in it which was allowed by the plaintiff to be used by the original tenant. After the demise of original tenant Ganpat Koli in the year, 1960, his wife Sakhabai started using the said premises. Sakhabai also expired in the year, 1982. Thereafter, the son of Sakhabai was in occupation of the suit premises. In fact, the original tenant was not given permission to utilise the open space around the shed but, it was utilised by the original tenant and his family members illegally. Shri Patil further submitted that the landlord-tenant relations in fact, had started after the death of Ganpat Koli. Till the life time of Ganpat Koli, the possession of the suit, premises was with him. The defendants had acquired alternate accommodation and they had constructed two residential houses. In this view of the matter, the suit premises were locked and were not in use, more particularly, for more than six months immediately preceding to filing of the suit. In fact, the suit premises were not used from the year, 1982.

12. Both the Courts below have recorded concurrent finding on the point that, the suit premises were not. used for more than six months immediately preceding the date of the suit and there was concurrent finding on the point of acquisition of suitable residential accommodation by the defendant No. 1 bearing C.T.S. No. 1427/B and 1427/A/2. It is contended in the written statement filed by the defendants that the description of the suit property as narrated in the plaint in para No. 1, was nearly correct.

13. The Lower Appellate Court had considered the points of the non user of the suit premises and acquisition of vacant and suitable accommodation by the defendants by raising point Nos. 3 and 4. These issues are covered u/s 13(1)(k) and 13(1)(D) of the Bombay Rent Act. In the cross-examination, the defendant No. 1, in para No. 9, has specifically admitted that Laxman Dalpat Koli is his son and he is residing in Shivaji Peth, Raver. Indubai is his daughter and she is also residing in Shivaji Peth. He had admitted in cross-examination that: house No. 1427/A/2 and 1427/B are owned by him which are situated at Shivaji Peth. The defendant No. 1 has specifically admitted the ownership of these two houses. The documentary evidence produced on record of the Trial Court, vide Exh. 7/1 is property extract of the house No. 1427/A/2. As per the said record, the house stood in the name of Laxman Dalpat Koli who is son of the defendant No. 1. The said property was purchased on 12.8.1985 under a registered sale deed. The document at Exh. 7/2 is the property extract of house No. 1427/B. It has been

recorded by the Lower Appellate Court that up to the year, 1986, the said property was shown in the name of Dalpat Ganpat Koli but, he had transferred the said property in the year, 1986 in the name of his daughter Indubai Koli. It is thus, seen that the defendant No. 1 had acquired accommodation after commencement of the Bombay Rent Act.

14. The defendants' family is joint and there is nothing on record to suggest that there was separation in the joint family. Hence, acquisition of the property, though transferred in the name of daughter by father, could not be an independent and separate property of the ownership of Indubai, more particularly, in absence of any deed executed by the defendant No. 1 in favour of his daughter Indubai Koli.

15. The son of the defendant No. 1 did not step into the witness box to support the case of the defendant No. 1, and to substantiate the claim that the property standing in his name had no concern with the defendant No. 1 Dalpat Koli. Based on this, it was rightly contended that since, 1982 the defendant No. 1 is residing in the said house at Shivaji Peth and he is not using the suit premises. The notices which were sent to the defendants by the plaintiff, were also addressed to them at the said house situated at Shivaji Chowk and those were received by them. The voters' list, which was part of the record at Exh. 72/2, of the year, 1990, shows the name of the defendant No. 1 residing in house No. 1427/B. The Lower Appellate Court had rightly discarded the evidence of witness Chaudhari who had claimed ignorance on the point as to whether the defendant No. 1 resides at Shivaji Chowk.

16. The Lower Appellate Court had rightly assessed the evidence on record and arrived at a finding that the house though said to be shown in the name of daughter of the defendant No. 1, cannot be treated as a separate and individual property of daughter Indubai Koli. Hence, both the houses were acquired by the defendant No. 1 initially in his own name though one of the houses was shown to have been acquired in the name of his son.

17. The learned Counsel for the petitioner had placed reliance on the following reported decisions on the point of exercise of jurisdiction by this Court under Article 227 of the Constitution of India.

- (1) Filmistan (P) Ltd. Vs. Balkrishna Bhiwa and Another, .;
- (2) Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others, .;
- (3) AIR 1975 1297 (SC) .;
- (4) AIR 2000 3495 (SC) and
- (5) Joginder Pal Vs. Naval Kishore Behal, .;

18. I place reliance on a reported decision of the Apex Court in Joginder Pal Vs. Naval Kishore Behal, . In this case the Apex Court has observed as follows :

The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants and to the landlords both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord too are weak and feeble and feel humble.

It is further observed thus :

In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to such use as he intends, away from leasing it out.

I also place reliance on a reported decision of the Apex Court in *Ouseph Mathai and Others Vs. M. Abdul Khadir*, wherein it has been observed that Articles 226 and 227 of the Constitution give extraordinary and discretionary powers to the High Court as distinguished from ordinary statutory powers. No doubt, Article 227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the Inferior Courts and Tribunals within the limits of their authority and that they do not cross the limits.

19. I do not find any error of jurisdiction in the impugned judgments and orders passed by the Courts below. No perversity is pointed out, to exercise writ jurisdiction of this Court, in the impugned judgments and orders. Writ Petition is

dismissed. No order as to costs.

Shri Phatak, the learned Counsel for the defendants seeks reasonable time for vacating the suit premises and handing over possession to the plaintiff. Shri Patil, the learned Counsel for the plaintiff objects to such a request. The defendants are granted three months time from today to vacate the suit premises and hand over vacant and peaceful possession, without creating any third party interest in the suit, premises, to the plaintiff, subject to the defendants filing an undertaking to the said effect in this Court within a period of fifteen days from today.