

(2011) 07 GUJ CK 0078
In the Gujarat High Court

Case No : Civil Revision Application No's. 978 and 981 of 1997 and Civil Application No's. 8031, 8033, 8034 and 8035 of 1997

Gurbachansing Karamsing

APPELLANT

Vs

Shailakaur

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 28(1)
Evidence Act, 1872 — Section 116
Transfer of Property Act, 1882 — Section 111

Citation : (2011) 07 GUJ CK 0078

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : M.B. Gandhi, for B.M. Gupta, for the Appellant; Prakash K. Jani, for the Respondent

Judgement

K.S. Jhaveri, J.—Heard learned advocates for the respective parties at length.

2. The present Revision Applications are directed against the judgment and decree dated 29.04.1997 passed by the Appellate Bench of the Small Causes Court, Ahmedabad in Civil Appeal No. 16, 17, 18, 19 of 1996 as well as the judgment and decree dated 21.12.1995 passed by the trial court in HRP Suit Nos. 1044, 1045, 1046, 1047 of 1986 whereby the suits were decreed and the appeals were dismissed by the appellate court confirming the decisions of the trial court.

2.1 The Petitioners have also filed Civil Applications for producing additional evidence being true copy of will dated 02.04.1964 executed by deceased Karamsingh. The said applications are also taken up for hearing along with the main matters.

3. It is the case of the present Petitioners - original Defendants that the present Respondent - original Plaintiff had filed suit for recovery of possession and

arrears of rent stating that she is the owner of the property situated at ground floor of a building bearing Municipal Census No. 588/E, Relief Road, Ahmedabad and that the so called property is let out to the Petitioners. It was the case of the Plaintiff-present Respondent that since the Petitioners were in arrears of rent for more than six months they were liable to be evicted from the premises. The trial court vide impugned order passed orders of eviction from the premises which were challenged before the appellate court. The appellate court after hearing the parties confirmed the orders of the trial court and dismissed the appeals. Being aggrieved by the said orders, the Petitioners have preferred the present appeals.

4. Mr. M.B. Gandhi, learned advocate appearing for Mr. B.M. Gupta for the Petitioners-original Defendants submitted that the courts below have failed to appreciate that the courts below had jurisdiction in the matter only with respect to those issues or subjects which are covered by Section 28(1) of the Bombay Rent Control Act and as such the courts below were not justified in refusing to accept the contention of the Petitioner - Gurbachansing Karamsingh -Petitioner of Civil Revision Application No. 978 & 980 of 1997 that he being the co-parcener in the suit premises the Respondent cannot claim any exclusive ownership of the suit premises.

4.1 Mr. Gandhi submitted that the Petitioner - Gurbachansing Karamsingh is not a tenant of the suit premises but a co-owner of the premises considering the fact that the property was purchased by the H.U.F of Karamsingh Iddatsingh of which he was the member. He submitted that the property was purchased in the name of the original Plaintiff as benamidar by the joint Hindu Family and therefore the original Plaintiff was not entitled to file the suit.

4.2 Mr. Gandhi further submitted that the Petitioners of Civil Revision Applications No. 979 & 981 of 1997 had taken the possession of the premises from Gurbachansing - Petitioner of Civil Revision Application No. 978 & 980 of 1997 who is the younger brother of the present Respondent's husband and that as such they had been paying rent of Rs. 100/- to the said Gurbachansing. He further submitted that it was also contended before the courts below that the father-in-law of the Respondent was the owner of the property and Gurbachansing being a member of the joint family was recovering the rent from the said Petitioners.

4.3 Mr. Gandhi also submitted that the courts below ought to have appreciated that when there is an allegation to the effect that there existed relationship of co-parcenary under the Hindu Law between Gurbachansing and the Respondent, and when the Petitioners of Civil Revision Applications No. 979 & 981 of 1997 had taken the suit premises on rent from Gurbachansing, there existed no relationship of tenant and landlady between the Petitioners of Civil Revision Applications No. 979 & 981 of 1997.

4.4 In support of his contentions, Mr. Gandhi has relied upon a decision of this Court in the case of Nanavati Jayantilal Chunilal Vs. Shah Ashabhai Mahijibhai

P.A.H. For Shah R.A., wherein it is held that a tenant does not lose his protection under the Rent Control Act merely by denying the title of his lessor. Disclaimer of the title of the lessor by the tenant cannot be said to be a condition of tenancy u/s 12(1) of the Rent Control Act.

4.5 Mr. Gandhi has also relied upon another decision of this Court in the case of Gandabhai Ranchhodji Gandhi v. Nosir Kavasji Sabawala and Ors. reported in 1993 (2) GLH 463 wherein it is held that the denial of the title by tenant must be clear, express and unequivocal and eviction cannot be ordered on vague or evasive denial by tenant.

4.6 Another Apex Court's decision relied upon by Mr. Gandhi is in the case of Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, wherein it is held that the power of attorney holder does not have the knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

5. Mr. Vyas, learned advocate appearing for Mr. P.K. Jani for the present Respondent-original Plaintiff has supported the orders of the courts below and submitted that the Respondent is the owner of the property at ground floor of a building bearing Municipal Census No. 588/E, Relief Road, Ahmedabad vide sale deed dated 23.08.1974 executed in her favor by the previous owner of the property Shri Chaitanyabhai Trikamlal Marfatia. He submitted that thereafter the suit shop of the property was let out to the Petitioners - Defendants.

5.1 Learned advocate further submitted that the Defendants failed to pay rent regularly and therefore notice was sent and served upon the Petitioners wherein specific averments were made and therefore it can be said that the tenants failed to comply with the demand of rent put forward by the original Plaintiff. He submitted that the impugned orders are passed rightly after considering the provisions of law and therefore this Court may not disturb the same.

5.2 Mr. Vyas further submitted that the property in question had been sold away by Mr. Trikamlal Marfatia to the present Respondent with a right to execute the decree passed in his favor in suit No. 1064/62. The Respondent being owner of the property by virtue of sale deed dated 23.08.1971 filed Execution Petition No. 1201/71 on 08.12.71. The Petitioner Gurbachansingh is also shown as Defendant No. 5 in the said Execution Petition.

5.3 In support of his submissions, he has relied upon the decisions of the Apex Court in the case of Sri Ram Pasricha Vs. Jagannath and Others, as well as Tej Bhan Madan Vs. II Additional District Judge and Others, .

6. At the outset it is required to be noted that the trial court in para 16 of the order passed in HRP Suit No. 1046 of 1986 has observed that in the instant case the raising of the dispute of title of the Plaintiff by the Defendant clearly did not arise out of the Act and that it is a question which dehors the Act and ought to have been determined by a Competent Court. It is further observed therein that

however, since the Defendant had led evidence maintaining that the Plaintiff was not his landlady and he was entitled to challenge the title of the landlady, the court had entered into the question of ownership of the suit premises of the Plaintiff and that the court was devoid of any doubt that the dispute raised by the Defendant was a malafide dispute. This Court is in complete agreement with the view taken by the trial court.

6.1 In the case of *Shriram Pasrischa* (supra) which is also considered by the courts below, the Apex Court has considered the provision of Section 116 of the Evidence Act and held that the tenant is stopped from questioning the title of the landlord u/s 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law in a suit between landlord and tenant, the question of title to the leased property is irrelevant.

6.2 Even in the case of *Tejbhan Madan* (supra), the Apex Court has held that the law as to the stopple of a tenant u/s 116 of the Evidence Act is a recognition and statutory assimilation of the equitable principles underlying stopple in relation to tenants. The section is not exhaustive of the law of stopple. The section inter alia predicates that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, title to such property.

6.3 The courts below have observed that as the Petitioners-Defendants- has not only denied the title of the Respondent-Plaintiff but also led evidence for setting up a title in himself/third party it is a fit case in which the ingredients of Section 111(g) of Transfer of Property Act are proved and the same is justified according to the view of this Court.

7. After considering the various documents on record, the facts which emerge from the record are that the claim of the present Petitioners that there was an H.U.F existing and that the suit premises was purchased by the H.U.F is not corroborated by any cogent and materialistic evidence. The learned advocate appearing for present Petitioners-original Defendants who has taken the said contention is not in a position to show that an H.U.F existed and such H.U.F had sufficient income to pay up Rs. 30000/- for the purchase of suit property in 1971. The appellate bench has observed that if the property was to be purchased by joint Hindu family of Karamsingh Iddatsingh then it must have been purchased in the name of any co-parceners and not in the name of wife of the eldest son. A female member of the family cannot be a co-parcener and therefore also there is reason to believe that if actually it was a property purchased by H.U.F of Karamsingh Iddatsingh, then it would have been purchased in the name of any male member of the family who is a co-parcener. In fact the very existence of an H.U.F of Karamsingh Iddatsingh is not proved by the Petitioner- Defendant.

7.1 It is required to be noted that that the Petitioner - Gurbachansing in his

attempt to challenge the title of the Plaintiff examined mother-in-law of the Respondent, brother-in-law of the Respondent, Babulal Vaghjibhai-a tenant of the building and Babulal Mohanlal-another tenant of the building-Petitioners of Civil Revision Application No. 979 & 981 of 1997. Though all these witnesses have tried to corroborate the say of the Defendant - Gurbachansing that the Plaintiff and her husband were residing in a joint family and that they had a joint business, no cogent evidence is forthcoming to show that the amount paid by the Plaintiff for the purchase of the suit premises was given by the joint family or H.U.F. In fact the evidence of Shri Chaitanyabhai Trikamlal Marfatia-the original owner of the suit premises at Ex. 108 in no uncertain terms reveals that he had sold the said building to the Plaintiff and that the Plaintiff herself had come to the Sub-Registrar's office and that the sale deed was executed by him in favor of the Plaintiff.

7.2 The husband of the Respondent-Plaintiff was examined before the trial court at Ex. 55 who also happens to be the Power of Attorney holder of the Respondent-Plaintiff. He has stated that the property in dispute was purchased by his wife from her own money. The only evidence in favor of the Petitioner-Defendant is the documentary entry of Rs. 30,000/- produced at Ex. 94 but the same shall not be sufficient to prove the entire transaction about the purchase of the property by any joint Hindu family of Karamsingh Iddatsingh.

8. Moreover, it is borne out from the records that the Petitioner-Defendant-Gurbachansing was carrying on business in the suit property in the name of Simla Silk Stores as a sub-tenant. However, the Petitioner-Defendant maintained that he was carrying on this business in partnership with one Shri Durlabhji. Even if the contention of the Petitioner-Defendant that the business of Simla Silk Stores run in the suit premises belongs only to him, the same runs contrary to the theory put forward about the purchase of the suit property by the joint Hindu family. The trial court has observed that if the said business belonged only to the Petitioner-Defendant- Gurbachansing and if it was run by him in his personal capacity there was no necessity for the joint family to purchase the entire building.

9. In absence of any evidence in favor of the Petitioners, the courts below have rightly held that the Defendant had no right to challenge or deny the title of the Plaintiff. Thus, the findings of the courts below that the Respondent-original Plaintiff is the sole owner of the suit property is just and proper.

10. The fact that the Defendants are the tenant of the suit premises is also clearly borne out from the records more particularly from Ex. 42, 56. The Defendant - Gurbachansing had also paid the rent of the suit premises for a period of one month by way of cheque. The said cheque was deposited by the husband of the Respondent-Plaintiff in the bank account of his wife-Respondent-Plaintiff. The Defendant - Gurbachansing himself has admitted that he had paid the municipal taxes and cases of the suit premises regularly. The signature on the lease deed Ex. 56 is not denied by the Petitioner-Defendant - Gurbachansing

in his evidence. In fact on the basis of this lease deed Ex. 56 the Petitioner-Defendant - Gurbachansing was inducted in the suit premises. The Plaintiff had served the Defendant with notices and ultimately on 05.02.1986 the last notice was served on the Defendant - Gurbachansing demanding amount of Rs. 11865/-.

10.1 As far as the other Petitioners-Defendants are concerned, it is proved from the records that they were inducted in the suit premises for the first time by the Respondent - Plaintiff after executing the decree passed in HRP Suit No. 1064 of 1962 and also after the possession warrant was executed. The courts below considered all these aspects in detail and came to the conclusion that the Defendant is a tenant in arrears.

10.2 Hence, it can be said that the Petitioner-Defendant executed a writing Ex. 56 about letting the suit premises to him on the basis of which the Petitioner-Defendant was inducted in the suit premises. It appears that the said premises were sub-let to other persons. One month's rent is also paid by cheque by the Petitioner-Defendant - Gurbachansing. The Petitioners of Civil Revision Applications No. 979 & 981 of 1997 have admitted that they were paying rent to Gurbachansing which means that they in fact were tenants. There is also an absolute sale deed in favor of the Respondent-Plaintiff which undoubtedly shows that she is the exclusive owner of the suit property and not Gurbachansing. Hence, the relation of landlord and tenant is proved beyond doubt in the present case. Even otherwise if the Will of the father of the Petitioner - Gurbachansing is read the clause therein refers to the tenancy rights and therefore the Will of the father of the Petitioner - Gurbachansing does not support the contention of the Petitioners.

11. In the case of Gandabhai Gandhi (supra), an inquiry was made by the tenant in respect of the title of the property from the landlord and therefore it was held that such inquiry made by the tenant in respect of the title of the property cannot be said to be denial of the title by the tenant. In the present case, the Petitioner-Defendant-tenant was fully aware that there is a sale deed in favor of the Respondent-Plaintiff-landlady and that one month's rent was duly paid by him to the landlady. Such denial cannot be said to be vague or evasive. In such an event the said decision shall not be applicable to the facts of the present case.

11.1 In the case of Nanavati Jayantilal Chunilal (supra), the tenant therein did not deny that he was the tenant of the property. There was no claim either that he was the owner of the property but the only statement made was that the property in fact belonged to another person and that the Plaintiff was only managing the property. It was held under such circumstances that the same does not amount to disclaimer within the meaning of Section 111(g) of the Transfer of Property Act. However, the facts and circumstances of the present case are completely on a different footing and therefore the findings and observations of said decision shall have no application on the instant case.

11.2 As far as the case of Janki Vashdeo Bhojwani (supra) is concerned, the

power of attorney in the present case is the husband of the Plaintiff herself who cannot be said to have no knowledge of the personal matters of the Plaintiff and therefore his evidence or deposition cannot be considered as irrelevant. The said decision shall also not be applicable to the facts of the present case.

12. Moreover, it is required to be noted that the scope of exercise of revisional jurisdiction is very limited. The concurrent findings arrived at by both the courts below are given on appreciation of evidence which cannot be said to be perverse or illegal or resulting into miscarriage of justice. This Court is in complete agreement with the reasonings adopted and findings arrived at by the courts below.

13. In view of foregoing reasons, Revision Applications are devoid of any merits and is therefore dismissed accordingly. Rule is discharged. Interim relief, if any, stands vacated in each application. Civil Applications are rejected in view of the order in main matters.

FURTHER ORDER:

14. At this stage, Mr. M.B. Gandhi, learned advocate for the petitioners - defendants has requested to grant some time for vacating the premises. In view of the averments made in the applications/affidavit that the premises have been sublet, though this court has not entered into the issue of sub-letting, this court is not inclined to grant any further time. Even otherwise, the matter is of the year 1997 and the suit is of the year 1996. The petitioners have been enjoying the fruits of litigation for these many years and the respondent has been deprived of the worthy right on the suit premises. Hence the request is rejected.