

(1997) 03 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 2167 of 1983

Jagannath Narayan Tigdi and Others

APPELLANT

Vs

Smt. Alzira Xavier Lobo

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Citation : (1997) 99 BOMLR 71

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Deshmukh, J.—This is a petition filed by the original plaintiff-landlord of whom the present petitioners are the heirs and legal representatives. The original petitioner Jagannath died during the pendency of this petition on 5th of June, 1996. Civil Application No. 1270 of 1997 was filed to bring the legal representatives of the deceased Jagannath on record and I have, by an order separately passed on that Civil Application, allowed that Civil Application.

2. The suit premises are situate in House No. 126-E, which comprises of 6 rooms, at Worlikoliwada, Prabhadevi, Bombay. The respondent is tenant in relation to 3 rooms in this house, namely, Rooms "D", "E" and "F". The original petitioner filed civil suit, being R.A.E, Suit No. 1186/1979 before the Small Causes Court at Bombay seeking a decree of possession against the respondent-tenant on the ground that he needs the premises bona fide for accommodating the members of his joint family. In the suit filed by the original petitioner-landlord Jagannath, it was his case that he along with his two brothers, namely, Mahadev and Jivan constituted a Hindu joint family and this joint family owns 3 house properties, namely, House No. 54A, one Patra Chawl and the suit house, namely House No. 126-E. He contended that in his joint family he has 20 members and the -accommodation available to the Joint family is not sufficient to accommodate all the members of the joint family and therefore he needs the suit premises bona fide for his own occupation. After trial, the trial Court by its

judgment dated 29.9.1982 held that the landlord Jagannath had proved his case that his family needs the suit premises bona fide for his own occupation. However, considering the aspect of comparative hardship, the trial Court directed the tenant-respondent to hand over possession of only one room in her occupation, namely Room "D". The tenant was to continue to occupy rooms "E" and "F". This partial decree passed by the trial Court was challenged by the tenant by filing Appeal No. 591/1982. That appeal has been allowed by the Appellate Court by its judgment dated 6.4.1983. The Appellate Court reversed the finding recorded by the trial Court on the question of bona fide need and dismissed the suit filed by the landlord Jagannath. It is against this order of the Appellate Court that the present petition has been filed.

3. Learned Counsel for the petitioners urged before me that the trial Court had recorded a finding that the plaintiff-landlord had established his bona fide need after appreciating the evidence on record. Therefore, without recording a finding that the appreciation of evidence on record by the trial court was not proper and giving cogent reasons for arriving at that conclusion, the Appellate Court could not have disturbed the finding of fact recorded by the trial court. Learned Counsel for the petitioners further urged that the Appellate Court, for reversing the finding of fact recorded by the trial court, has taken into consideration many circumstances which have no foundation on record. In the submission, of the learned Counsel, though it is clear from the judgment of the Appellate Court that the family is in need of additional accommodation in view of the impending marriage of the sons in the family, the Appellate Court observed that the family can construct additional rooms on the terrace to provide accommodation for the married couples. In the submission of the learned Counsel, this is not the proper approach to be adopted by the Appellate Court in reversing a finding of fact recorded by the trial court.

Learned Counsel for the respondent, on the other hand, submitted that so far as the suit house is concerned, it is presently occupied by Shashikant, who is the son of the landlord Jagannath, Jivan, who is the brother of the landlord Jagannath, and Vishwanath, who is the son of Jivan. He contended that, considering the accommodation that is already available with the landlord, it is not necessary for the landlord to occupy the room which is presently occupied by the tenant, namely Room "D". He further pointed out that it is clear from the judgment of the trial court that the trial court had recorded a finding that additional room is necessary for the family of the landlord and the tenant was directed to vacate Room "D" because Dattatray, who is son of Jagannath, namely, the landlord, was to get married and for accommodating him, additional room, according to the trial court, was necessary. Learned Counsel for the respondent urged that in view of the additional affidavits filed in this petition, it is now an admitted position that Dattatray is presently residing in Zimbabwe and therefore, in the submission of the learned Counsel, it cannot be said that the joint family of the landlord is in need of additional accommodation.

5. Now, in view of the rival submissions, it is to be seen whether the approach of the Appellate Court in disturbing the finding of fact recorded by the trial court was correct and proper. It is to be seen that it was the case of the landlord that the accommodation available with the joint family in House No. 54A was not sufficient. It was the case of the landlord that there are 4 unmarried sons in the family and there is no accommodation available to accommodate these unmarried sons after their marriage. While dealing with this aspect of the matter, the Appellate Court, in paragraph 22 of its judgment, has observed as under:

Then remain only 4 unmarried sons and one unmarried daughter to be accommodated. They can well be accommodated in the large couples of House No. 54-A and room "A" in Chawl No. 136/E. Their marriages are not in the offing in the sense that they are not settled. Even if we assume that the marriages of one or two youngsters are settled they can well be accommodated in the bed rooms of the verandah or open terrace. As a matter of fact when the exigencies demanded the Plaintiff did provide accommodation to the married sons Shashikant and Dattatray in two newly constructed rooms on the first floor. It is not improbable and it is most probable that the Plaintiff in the event of settlement of further marriages of one or two youngsters can accommodate them by some adjustment in the closed verandah or open terrace or halls in House No. 54-A and room "A" in House No. 136/E.

It is clear from the observations of the Appellate Court quoted above that though, after the marriages of young sons in the family, the family will need accommodation, in the opinion of the Appellate Court, the family can raise construction for accommodating the married sons. In my opinion, the approach adopted by the Appellate Court is absolutely wrong. The very fact that a landlord has to take up additional construction to accommodate members in the family establishes the pressing requirement of additional accommodation of that family. It is further to be seen that the Appellate Court has totally misdirected itself in appreciating the evidence on record. The following observations of the Appellate Court in paragraph 24 of its judgment are pertinent in that regard :

We are of the opinion that when the circumstances of this trial are considered as a whole and read in between the lines, we do not find any bona fides on the part of the Plaintiff in instituting the present suit.

In my opinion, having once found that the family was required to take up construction of additional rooms in order to accommodate the married couples in the family, it is not possible to record a finding that the landlord does not bona fide need the suit premises. It is further to be seen that though the Appellate Court has said in paragraph 22 of its judgment that room "A" in the suit house can be used for accommodating the newly married couples, room "A" in the suit house is already occupied by Jivan, who is brother of the landlord, and his family. In so far as the submission made by the learned Counsel for the respondent in relation to the need of Dattatray is concerned, it is to be seen that though the trial court had considered the need of accommodation for Dattatray because of

his impending marriage, Dattatray had married during the pendency of the appeal and it appears from the observations of the Appellate Court that an additional room was constructed. It is clear from the judgments of both the Courts below that the joint family of the landlord is a growing family and therefore is definitely in need of additional accommodation. In the additional affidavit filed in this Court on behalf of the landlord, it is stated that so far as Dattatray is concerned, he has gone temporarily to Zimbabwe and the learned Counsel for the petitioners stated before me that he is likely to return in the month of April 1997. It is further to be seen that of the two daughters of the tenant-respondent, one is already married and presently one unmarried daughter and the respondent-tenant are residing in the suit premises. The husband of the respondent is in Kuwait for the last so many years. In my opinion, the trial Courts after considering the relevant aspects of the matter had passed a partial decree and had directed the tenant to hand over only one room to the landlord. There was no justification for the Appellate Court to disturb that finding.

6. In the result, therefore, the petition succeeds and is allowed. Rule made absolute in terms of prayer Clause (b) with no order as to costs.

7. At this stage, learned Counsel for the respondent requests that operation of this judgment should be stayed for a period of 8 weeks obviously to enable him to approach the higher Court. Learned Counsel for the petitioners does not oppose this request, It is therefore directed that the operation of this judgment shall stand stayed for a period of 8 weeks. However, it is directed that during this period, the respondent-tenant shall not part with possession of the suit premises in favour of anybody except the petitioners and shall not create any third party interests therein.

Certified copy expedited.