
(2000) 06 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 3384 of 1987

Jagdishrai Shivnathrai Hora

APPELLANT

Vs

Prabhakar Balkrishna Mahanubhav

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 5(3)
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 3, 58

Citation : (2000) 4 ALLMR 66 : (2000) 4 BomCR 778 : (2001) 4 BOMLR 268 : (2000) 4 MhLj 442

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.G. Page and S.G. Surana, for the Appellant; Ms. Anjali Helekar and B.P. Apte, for the Respondent

Judgement

A.M. Khanwilkar, J.—This writ petition takes exception to the judgment and order passed by the 6th Additional District Judge, Pune in C.A. No. 441 of 1985 dated 15-4-1987.

2. The petitioner is the tenant in respect of the suit premises consisting of 2 rooms on the 3rd floor of House No. 130 situated at Ganesh Peth, Pune. The respondent instituted a suit against the petitioner, being the owner, praying for possession of the suit premises on the ground of arrears of rent, now user of the suit premises for more than 6 months preceding the institution of the suit and for having acquired alternate suitable accommodation. The parties laid evidence before the 3rd Additional Small Causes Court, Pune being C.S. No. 23 of 1982. The Trial Court by its judgment and order dated 20-4-1984 decreed the suit for possession on the ground that petitioner has acquired alternate and suitable premises and for having kept the suit premises locked for more than 6 month preceding the date of institution of the suit.

3. Being aggrieved, the petitioner preferred appeal before the 6th Addl. District Judge, Pune being C.A. No. 441 of 1985. Before the Appellate Court the petitioner sought to rely on certain documents in support of his contention that the respondent was not entitled to maintain the suit as owner since the suit premises was owned by the trust formed by one Govindraj Dayaraj Mahanubhav. The Appellate Court considered the said additional evidence relied upon by the petitioner but concluded that the suit as filed by the respondent was maintainable and could proceed against the petitioner. The Appellate Court affirmed the findings of facts recorded by the trial Court with regard to the ground of petitioner having secured alternate suitable accommodation and of non user of the suit premises for period of more than 6 months preceding the institution of the suit. Accordingly the Appellate Court dismissed the appeal and confirmed the decree of eviction.

4. It is against these concurrent decisions that the present writ petition under Article 227 of the Constitution of India, has been filed by the petitioner-tenant.

5. It is relevant to point out that while this writ petition was pending the petitioner filed an application being Civil Application No. 4551 of 1987 praying that the petitioner be allowed to amend the written statement. The nature of amendment is articulated in Exh. A of the said Civil Application, which reads thus :

"6-A The plaintiff is not the owner of the suit property, The premises have not been let by the present plaintiff. The plaintiff has no right, title or interest in the premises. The original owner was one Govindraj Mahanubhav. He created a private trust under a registered deed dated 17-6-1959. The trust was named as PUNJAB NIWASI JAYAKRISHNIYA MAHANUBHAV SRIKRISHNA MANDIR TRUST. Under this Deed, Govindraj appointed seven trustees including himself. Govindraj was to be Managing Trustee during his life time. Govindraj was given a right to appoint a Mahanta who would succeed him after his death. But after the death of Govindraj, the right to appoint Mahanta was conferred on the Trustees. This Trust was created in respect of one of the properties of Govindraj namely, House No. 358, Ganesh Peth. Thereafter, Govindraj executed a Will dated 7-4-1971 and under this Will be bequeathed all his properties including the suit property in favour of the Trust created under the Registered Deed dated 17-6-1959. By this Will, he appointed one Balkrishna as executor and also as the Mahanta. Balkrishna died some time in 1979. The aforesaid facts clearly show that the suit property is vested in the Trust and only the Trustees have got right to file the suit for eviction. The plaintiff claim to be the executor appointed by Balkrishna under a Will has no right to appoint another executor by a Will. Thus the Will dated 16th January 1978 can-not confer any right upon the plaintiff. It is also pertinent to note that the Trustees in whom the suit property is vested have categorically denied the plaintiff's right to act as an executor or a Mahanta. Thus the present suit filed by the plaintiff cannot be even said to be on behalf of the Trust or the Trustees. Thus the suit is hopelessly untenable in law, and is liable to be

dismissed."

The learned Counsel for the petitioner placed on record the above referred documents executed by said Govindraj for creating a Trust in respect of the suit property which was owned and possessed by him.

6. Although notice was issued on the said Civil Application No. 108 of 1987 and the same was directed to be heard along with present writ petition, however, the respondent has not filed any reply controverting the contents of the application or the nature of amendment sought or even objecting to the prayer mentioned therein. It is only at the time of hearing of the petition that the learned Counsel objected to grant of said prayer for amendment as according to her it would totally change the nature of the pleadings of the parties causing miscarriage of justice.

7. The learned Counsel for the petitioner has referred to document purporting to be a Trust deed dated 17-6-1959 whereby the said Govindraj nominated 7 trustees including himself. Later on Govindraj has executed a Will, which is registered dated 7th April 1971. As per the said Will Govindraj had appointed one Balkrishna Govindraj to administer the property in question. It is stated that under the said Will no right was granted or created in favour of Balkrishna to further appoint his successor. It appears that said Govindraj formed a religious Trust before he died on 24-12-1971. After the demise of the said Govindraj, Balkrishna seems to have taken over the administration of the entire property and who in turn, executed a Will on 16-1-1978. By the said Will, Balkrishna has bequeathed the suit property in favour of the respondent-plaintiff. The learned Counsel for the petitioner therefore contends that having regard to all these documents it is crystal clear that the respondent was not the owner in respect of the suit property as has been claimed, by him while instituting the suit against the petitioner. It was, therefore, submitted by the learned Counsel for the petitioner that since the respondent is not the owner in respect of the suit property, he had no locus standi to institute the suit for eviction against the petitioner. He further contends that as per the Will dated 7-4-1971, the said Balkrishna had no authority to appoint his successor and as such the Will executed by Balkrishna on 16-1-1978 in favour of the respondent is of no avail. According to him the said document of 16-1-1978 cannot create any legal right in favour of the respondent so as to give him the status of the owner thereby entitling him to maintain the suit for eviction against the petitioner as the owner of the premises. The aforesaid question, according to the learned Counsel for the petitioner, went to the root of the matter with regard to the right of respondent to institute the suit as owner. He further points out that even with regard to the finding recorded by the two Courts below on the question of the petitioner having acquired alternate and suitable accommodation as well as for having kept the suit premises locked and unused, the same cannot be sustained at all.

8. On the other hand, the learned Counsel for the respondent submits that it is not open for the petitioner to question the status of the respondent that of his

landlord, in the manner in which it has been done in the present case. The learned Counsel has relied on the averments of the plaint and the reply given by the petitioner, in his written statement in response to those averments. More than that the learned Counsel has relied upon the admission of the petitioner during the cross examination before the Lower Court which reads thus :

"Plaintiff is collecting rent of the suit property. Balkrishna was the Guru of the plaintiff and not the father, I have no objection if the plaintiff is the owner and recovers the rent."

The learned Counsel for the respondent submits that having regard to the pleadings and the evidence, particularly the admission by the petitioner, the stand now taken by the petitioner regarding the maintainability of the suit is wholly misplaced and ought not to be entertained at such a belated stage.

9. The learned Counsel for the petitioner also placed reliance on the decision of the Apex Court reported in S. Thangappan Vs. P. Padmavathy, , which according to her, squarely apply to the facts of the present case. With regard to the merits, regarding the ground of this petitioner having acquired alternate suitable premises and of non user of the suit premises, it is contended that the two courts below have concurrently recorded findings of facts against the petitioner which ought not to be interfered with in writ jurisdiction.

10. Having considered the rival submissions, I would first proceed to deal with the objection raised by the petitioner with regard to the entitlement of the respondent to maintain the suit for eviction against the petitioner. No doubt the petitioner's Counsel has referred to various documents which would show that a trust has been created and the property, prima facie, vest in the said Trust. However, on careful examination of the said aspect I am inclined to reject the said objection mainly on the basis of the pleadings and the admission of the petitioner before the trial Court. It is material to point out that in the plaint the respondent has averred in para 2 of the plaint that he was the owner in respect of the said premises. The petitioner has not replied to the said averment, which has the effect of admitting the same. Moreover, in para 6 of the written statement, only a vague assertion has been made by the petitioner that the plaintiff alone is not the owner and hence he alone cannot file the suit. In my view, such an averment is of no avail at all. Besides the above pleadings, even during the evidence, the petitioner has admitted in so many words that the respondent plaintiff was collecting the rent in respect of the suit premises from him and further that he had no objection if the respondent continued to recover the rent thereof as owner. In view of the said admission and the above pleadings, nothing more was required to be examined by the rent Court. The definition of "landlord" under the Bombay Rent Act, as provided u/s 5(3) would clearly cover this situation. Although the respondent cannot be strictly said to be the owner of the property, as claimed in the plaint, however, he was definitely the landlord within the meaning of section 5(3) of the Bombay Rent Act, thus competent to maintain the suit against the petitioner. We are in no way concerned with the

issue of title in respect of the suit property and it is enough for this Court to record a finding that the respondent was the landlord within the meaning of the Act and for which reason he was competent to maintain the suit for eviction against the petitioner tenant. In my view, the decision of the Apex Court relied upon by the learned Counsel for the respondent reported in *S. Thangappan Vs. P. Padmavathy*, , squarely applies on all fours to the present case. It is thus held that the suit as presented by the respondent is maintainable in law.

11. The learned Counsel for the petitioner made an unsuccessful attempt in persuading this Court that since the petitioner was not aware of the correct situation until the pendency of proceedings before the Appellate Court, when he came across the said documents, therefore, the pleadings as well as his evidence before the trial Court should be ignored. I am not at all impressed by the said argument for the simple reason that the petitioner has not disputed the fact that the respondent was collecting the rent from the petitioner in respect of the suit premises and as such the petitioner had accepted him as his landlord within the meaning of the said Act. In the circumstances the said argument deserves to be stated to be rejected.

12. Now coming to the merits of the case, after having perused the judgment of the two Courts below and on considering the rival submissions, I see no reason to interfere with the findings of facts recorded by the two courts below. The Appellate Court in para Nos. 9 and 10 of the judgment has elaborately considered the factual position and the evidence on record and has recorded a clear finding that there was no dispute that the petitioner has acquired an alternate accommodation. Both the courts below have considered the plea and suitability of the newly acquired accommodation and have concluded that the same is suitable as it admeasures about 300 sq. ft. whereas the suit premises was only 2 rooms accommodation. Both the courts below have also recorded a clear finding, which is not seriously challenged by the petitioner, that the suit premises were not in use. The petitioner however sought to justify non user on the ground of lack of basic amenities due to which the petitioner was unable to utilise the same on regular basis. Nevertheless, the position remains that the suit premises was not in use, which ground alone was sufficient to order eviction against the petitioner. Besides this the said reason can be used in aid of the other ground pressed into service by the respondent that the petitioner has acquired suitable accommodation elsewhere. The fact that alternate accommodation is being used by the petitioner coupled with the fact that the suit premises are unused clearly go to show that the newly acquired accommodation is suitable for the requirement of the petitioner. In this view of the matter, I am not inclined to interfere with the finding recorded by the courts below. The two courts below, in my view, have given well reasoned judgment on the main issues that the petitioner has secured alternate and suitable accommodation as well as that the suit premises are not used for more than 6 months preceding the institution of the suit.

13. In the premises aforesaid writ petition deserves to be dismissed and the decree of eviction passed by the courts below is affirmed.

Accordingly, writ petition is dismissed with costs all throughout. Rule discharged. Interim stay if any, vacated.

Certified copy expedited.

Parties to act on the copy of this order duly authenticated by Sheristedar of this Court.

14. Petition dismissed.