
(1966) 01 GUJ CK 0008
In the Gujarat High Court

Khimchand Hargovandas Shah

APPELLANT

Vs

Ganchi Valibhai Gababhai

RESPONDENT

Date of Decision : 27-01-1966

Acts Referred:

Bombay Rent Restriction Act, 1939 — Section 50

Bombay Rents, Hotel and Lodging House Rates Control Act, 1944 — Section 12, 50

Citation : (1966) 7 GLR 895

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This Second Appeal arises out of the suit filed by the Appellant for possession of a Ghabhan (building site) in the Village Masar Road. The suit was filed in the Court of the Civil Judge (Junior Division) Padra, District Baroda and was No. 26 of 1958. After the suit was filed Part II of Bombay Rents, Hotel and Lodging House (Control) Act, 1947 (Bom. Act LVII of 1947) was applied to Masar Road as when the Act was enacted, it was not applied area. But subsequently on 23rd October 1958, the State Government extended Part II of the Act to the village Masar Road. Both the below have held that in view of the provisions of Section 12 in Part I Act, the suit was liable to be dismissed and thereupon dismissed the suit.

2. The Appellate Court relied upon Section 50 of the Act which as follows:

50. The Bombay Rent Restriction Act, 1939, and the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1944, are hereby repealed: Provided that all suits and proceedings between a landlord and a tenant related the recovery of fixing of rent or possession of any premises to which the provisions of Part II apply and all suits and proceedings by a manager of a hotel or and of a lodging house against a lodger for the recovery of charges for, or poses of, the accommodation provided in a hotel or lodging house situate in an which Part III applies, which are pending in any Court, shall be transferred continued before the Courts which would have jurisdiction to try such proceedings under this Act or shall be

continued in such Courts as the case may be, and all the provisions of this Act the rules made thereunder shall apply such suits and proceedings.

Nothing in this proviso shall apply to execution proceedings and appeals out of decrees or orders passed before the coming into operation of this Act. Such execution proceedings and appeals shall be decided and disposed of as they had not been passed:

Provided further that-

(a) every order passed or act done by the Controller under Part IV Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, an order or act deemed to have been passed or done under that part shall be deemed to have been passed or done under this Act; and

(b) all proceedings pending before the Controllers under Part IV of the Act shall be transferred to and continued before the Controllers appointed under the Act as if they were proceedings instituted before the Controllers under this Act.

3. By Section 50 of Act LVII of 1947, the Bombay Rent Restriction Act and the Bombay Rents, Hotel Rates and Lodging House Rates Act, 1944 were repealed and the proviso was enacted for the transfer of certain suits and proceedings relating to the recovery and fixation of rent and Part II of Act LVII of 1947 was applied. The expression "to the provisions of Part II apply" would mean "to which proviso Part II applies when the Act is enacted". The expression used "to which the provisions of Part II may be extended or may be a Section 50 therefore does not apply to suits remaining in arrears when of Act LVII of 1947 had been extended or applied i.e. Section 50 was applied to the present suit and therefore Section 12 also which in Part II of the Act would not apply. Moreover, as held by Their Lordships the Supreme Court in *Chandrasinh Manibhai v. Surjit Lal Chhabda* 53 B. 1 R. 532, Section 12 is not retrospective. Therefore the lower Courts were wrong in holding that Section 12 was applicable to the facts of this case and deciding the case on that basis. The appeal is therefore set aside. The appellate Court is asked to return the matter on the basis that Section 12 is not applicable. No order as to costs.