
(1972) 03 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 1811 of 1966

Kishan Saluba

APPELLANT

Vs

Dharamdevi and Another

RESPONDENT

Date of Decision : 06-03-1972

Acts Referred:

Citation : AIR 1974 Bom 96 : (1973) 75 BOMLR 703 : (1974) ILR (Bom) 120 : (1973) MhLj 951

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : A.B. Naik, for S.P. Kurdukar, for the Appellant; G.D. Deshpande and A.M. Dabir, for the Respondent

Judgement

Vaidya, J.—The only point which arises in this special civil application directed against a decree for eviction passed by the Rent Controller at Aurangabad and confirmed in appeal by the District Judge, Aurangabad, on September 9, 1966, is whether the two authorities under the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, were right in holding that the respondent No. 1 was entitled to apply for an order of eviction u/s 15 (3) not with standing that she was occupying a residential house in which she had a share along with her brother and sister.

2. The subject-matter of dispute between the petitioner-tenant and respondent No. 1 landlady, consists of the ground floor of a portion of a building bearing Municipal No. 1155 situate at Raja Bazar at Aurangabad, Respondent No. 1 Dharmadevi became the owner of the said house under the Will executed by her father late Rai Chotelal, Curiously, Rai Chotelal had not made any Will in respect of any other property and died on April 6, 1961, leaving behind him one son and two daughters, one of whom was the respondent No. 1.

3. The respondent No. 1 filed an application before the Rent Controller u/s 15 (3) of the said Act, on the ground that she needed the said house for her residential purpose and also on the ground that the petitioner had used the premises for

doing the business of oil extraction, through the house was given to him only for residential purposes.

4. The application was resisted by the petitioner inter alia on the ground that he had not changed the use of the premises and that as the respondent No. 1 was occupying a residential house owned by her father and after his death by herself and brother and sister, she could not make an application in view of the provisions of Section 15 (3) (a) of the said Act.

5. On considering the evidence before him, the Rent Controller found in favour of the respondent No. 1 so far as the requirement of bona fide use of the residence is concerned. The issue with regard to the fact of the user was given up before him. The Rent controller therefore, passed the order of eviction on August 26, 1965. The petitioner carried an appeal against the said decision before the District Judge at Aurangabad. The appeal was dismissed by the District Judge, who agreed with the view taken by the Rent Controller, observing as follows:-

"The words 'of his own' show that the house already in possession or occupation of the landlord must exclusively belong to him. It would not be enough for the application of this provision that the landlord has undivided or fractional interest in the house with some other co-sharers. Admittedly, the respondent in this case is not alone entitled to the property left behind by Rai Chotelal but she would have only a fraction of an interest therein. A partition will have to be effected before she can claim any particular house as being of her own. Consequently, it is difficult to accept the contention put forth on behalf of the appellant".

6. The said findings of the District Judge and the Rent Controller are challenged in the above petition on the ground that the same are patently on the ground that the same are patently illegal, as admittedly respondent No. 1 was occupying a residential house of her own in Aurangabad, within the meaning of Section 15 (3) (a) (i) of the said Act. This contention is valid. The learned District Judge and the Rent Controller could not re-write the section by adding the word "exclusively" in Section 15 (3) (i) of the Act. The intention of the legislature in making this provision was to confer a right on the landlord, who bona fide needed the premises, to evict the tenant who was in occupation thereof. It would be unreasonable to hold that merely because the landlady shared the house with somebody else as Owner, through she occupied the house, she could further take the benefit of the provisions contained in the Act for evicting a tenant. It is well settled that it is not for the Courts to question the wisdom of legislature and re-write and/ or add a word where it did not exist. The section is, as it is, not at all ambiguous. Its plain meaning is that if the landlord is occupying a house owned by himself or jointly by himself and other, it is not open to him to make out a case that he was in need of other premises..

7. In the result, the petition succeeds. The orders passed by the District Judge and the Rent Controller are quashed and the application filed by respondent No. 1 for evicting the petitioner is dismissed with costs throughout.

8. Petition allowed.