
(2008) 12 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No. 376 of 1994

Leelabai Maruti Holkar

APPELLANT

Vs

Chaturabai Siddheshwar Javeri

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)

Citation : (2009) 3 BomCR 375 : (2009) 2 MhLj 194

Hon'ble Judges : Mohta Anoop V., J

Bench : Single Bench

Advocate : G.M. Khambete, for the Appellant; S.M. Gorwadkar, for Respondent
Nos. 1-G(A) to 1-G(C), for the Respondent

Final Decision : Dismissed

Judgement

Mohta Anoop V., J.—The petitioner has challenged the concurrent finding of fact arrived by both the courts whereby, basic plea of the petitioner-tenant, now her heirs, is rejected that she is tenant of the suit premises. Leelabai, Original-tenant was in occupation prior to 1986. The said room, in an old house made up of mud, in dilapidated condition, was collapsed on 04/10/1986. The petitioner, therefore, filed a suit for mandatory injunction praying for directions to reconstruct the room for her. The suit was dismissed on 14th August, 1989. There is no provision or even otherwise whereby the landlord can be compelled to reconstruct the room for the tenant in situation like this. The tenant can claim possession of the room only in case the landlord obtains a decree against the tenant u/s 13(1)(kk) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short, "The Bombay Rent Act"). The tenant, in a given case, may claim possession of the room if landlord construct in place of old one. There is no material to show that the landlord wants to reconstruct any premises on the first floor. The courts, therefore, after considering even the material available on record, rightly dismissed the suit.

2. The plaintiff herself never entered into a witness box. One Vijay Maruti, P.W. 2

without placing anything on record including power of attorney, lead the evidence. The said witness admitted that there was no power of attorney given to him. The said witness also conceded in his cross-examination that since last 3 years, plaintiff was not residing in the suit premises.

3. The Appellate Court also dismissed the appeal, in view of the above facts and circumstances of the case. The learned Counsel appearing for the petitioner submit that the issue with regard to her tenancy rights was not considered by the courts below, has force. As noted by both the courts, there is no merit in the contention raised as no relief as prayed in the suit could have been granted to the petitioner-original plaintiffs. In the present case, admittedly, the tenancy was of mud room of first floor. It is now totally collapsed. There is no structure whatsoever, standing thereon. There is no document to show that the alleged tenancy was of the land also.

4. The Supreme Court in Vannattankandy Ibrayi v. Kunhabdulla Hajee 2000 DGLS (soft) 1784 : 2001 (1) S.C.C. 564, held that the tenancy or such rights presupposes an existence of property. There could not be subsisting tenancy where the property is not in existence. In the present case also, as the room in question, as noted already, collapsed and extinguished, I see there is no such declaration can be granted of tenancy of the said room as claimed in the present case. There was no agreement, whatsoever, of land tenancy.

5. By the said Judgment, the Apex Court has overruled the Hind Rubber Industries Pvt. Ltd. Vs. Tayebhai Mohammedbhai Bagasarwalla and Others, , upon which strong reliance has been placed by the learned Counsel appearing for the petitioner. As noted in the circumstances of the present case itself, as the room was on first floor and there was no material to show that there was any tenancy created with regard to the land in question, the reliance of T. Lakshmipathi and Others Vs. P. Nithyananda Reddy and Others, , by the petitioner is also of no assistance. In that case the lease was of the building with the land. This is not the case here.

6. In Shivram Ladu Nitardekar Vs. Alex Fernandes and Others, , same circumstances it is the residential premises collapsed and extinguished, held that the tenancy of such premises also extinguished.

7. Therefore, taking all this into account, the petitioner is not entitled to the relief as claimed. The petition, is therefore, dismissed. No order as to cost