

(2009) 09 BOM CK 0068
In the Bombay High Court
Case No : First Appeal No. 266 of 1987

Lockwood Industrial and Transport Services	APPELLANT
Vs	
Victoria Timber Supplying	RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(26)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15, 15A, 28, 29A, 4
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 98, Order 21 Rule 99
Easements Act, 1882 — Section 62A

Citation : (2009) 6 BomCR 105 : (2010) 1 MhLj 187

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : D.S. Sawant, for the Appellant; Cherag Balsara, M.S. Dehlvi, instructed by Negandhi, Shah and Himayatullah, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Appellants are original plaintiffs and respondents are original defendants. Appellants are challenging the judgment and order passed by the City Civil Court, Bombay in Special Civil Suit No. 6405 of 1975 whereby the learned Judge of the City Civil Court was pleased to dismiss the suit filed by appellants.

2. Brief facts are as under:

3. Appellants (hereinafter referred to for the sake of convenience as plaintiffs) filed Special Civil Suit No. 6405 of 1975 against respondents (hereinafter referred to for the sake of convenience as defendants), seeking decree against defendants for eviction from the suit premises on the ground that they are trespassers, secondly, for damages to the tune of Rs. 8,500/-and, thirdly, for mesne profit @ Rs. 500/-per month for their illegal occupation of the said

structures.

4. The Bombay Port Trust is the owner of the land bearing Survey Nos. 11/671 and 12/671 of Margaon Division admeasuring about 1950 sq. yards. It is an admitted position that the Bombay Port Trust has leased out the said land to M/s Kothari Saw Mills (For short KSM) who had, when they were in possession of the said land, erected some structures on the said land. The structure shown with block D and demarcated by words WXYZ in Exhibit-A annexed to the plaint is the subject matter of the suit. It is the case of plaintiffs that KSM accumulated arrears towards the lease rent and, as such, the lease was transferred from KSM to plaintiffs on/or about 01/11/1970 and, therefore, plaintiffs stepped into the shoes of KSM. According to plaintiffs, defendants were permitted by KSM to store their excess goods in the suit premises marked D as licensees. According to plaintiffs, the room above the suit premises marked D-1 with staircase from premises D was previously used by KSM and after 1/11/1970 by plaintiffs. According to plaintiffs, there was one opening door for both the premises D and D-1. According to defendants access to the suit premises was through two doors; one was used by defendants and the other by plaintiffs. It is the case of defendants that they had independent access to the suit premises. According to plaintiffs, they had asked defendants to remove their goods since their license had come to an end. After the interest of KSM ceased in the premises, defendants claimed to be the tenants of KSM.

5. On 09/05/1971, there was a big fire on the property and most of the structures, including the suit premises D and D-1 were destroyed. Plaintiffs, thereafter, filed suit No. 3893 of 1971. According to plaintiffs, though an interim order was passed in the said suit restraining defendants from storing their goods, they continued to do so and, as such, plaintiffs filed a comprehensive suit i.e present S.C. Suit No. 6405 of 1975 on the ground that defendants have no legal right and were illegally using and occupying the suit premises as trespassers and, therefore, they were liable to be evicted from the suit premises.

6. Defendants have filed their Written Statement in which they claimed that KSM had let out the suit premises to them on monthly rent of Rs. 75/-and it was alleged that KSM had taken deposit of Rs. 6500/-and issued receipt dated 9/1/1968. They also claimed that plaintiffs had granted them leave and license for storing and they had become statutory licensees. Defendants also relied on 16 receipts claimed to be issued by KSM during 1966 to 1970 as rent receipts. Trial Court recorded evidence of P.W.1, D.W.1, D.W.2, D.W.3 and D.W.4. Trial Court dismissed the suit filed by plaintiffs.

7. Mr. Sawant, the learned Counsel appearing on behalf of appellants made following submissions:

(1) Firstly, he submitted that Bombay City Civil Court had no jurisdiction to try issue Nos. 4 and 6. Secondly, he submitted that in view of Section 4(1) and & 4(4)(a) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947

(For short Bombay Rent Act) provisions of the Rent Act are not applicable to the vacant land held by any person from Government or local authority. He thirdly submitted that, in the present case, BPT had given vacant land on lease to KSM. Therefore, provisions of Bombay Rent Act are not applicable and, therefore, suit filed in the City Civil Court was legal and proper. In support of the said submissions he relied upon following judgments:

(2) Secondly, he submitted that jurisdiction of the Court had to be ascertained on the basis of pleadings made in the plaint. In support of the said submissions, he relied on the following two judgments:

(3) Thirdly, he submitted that the City Civil Court had erred in declaring that defendants are tenants/protected licensees. He submitted that if plaintiffs had failed to prove that defendants are trespassers then, in that event, trial court should have simply dismissed the suit but no further declaration should have been given by the City Civil Court that defendants are tenants/protected licensees. In support of the said submission he relied upon the judgment of the Apex Court in Sanwaramal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others, . He then submitted that even assuming that KSM had granted leave and license to defendants, even then the moment BPT terminated lease of KSM, the alleged leave and license of defendants was automatically extinguished in view of Section 62A of the Easement Act. He then submitted that plaintiffs were neither assignees nor bound by any arrangement between KSM and defendants. In support of this submission he submitted that (i) any assignment of lease of plot and ownership of structure would require a registered deed of assignment which was not produced by defendants, (ii) defendants Exhibits-2 and 26 show grant of fresh lease by BPT, (iii) defendants were not entitled to protection under the Bombay Rent Act in view of their own evidence i.e. alleged occupation and license were only for portion 20 x 20 of the suit premises as deposed by D.W.2 which was admittedly measuring 27 1/2 x 23 1/2 and in view of the Bombay Rent Act, licensed premises not less than a room were protected by Section 15A, (iv) defendants did not have exclusive possession of the suit premises and (v) defendants had not led cogent and sufficient evidence to prove their claim as tenants/protected licensees for the following reasons:

(a) Defendants had not produced the alleged leave and license agreement on record;

(b) the rent receipts produced on record do not refer the description or number of the suit premises;

(c) the account books, rent receipts are produced on record, but the contents of the same are not proved as per the provisions of the Indian Evidence Act;

(d) there is contradiction in evidence of D.W.1 (John Mohammed Ismail) and D.W. 3 (Abubakar Ismail Memon). The D.W.1 had stated that the amount of Rs. 65,000/- was paid towards deposit, while D.W. 3 had stated that it was paid as an advance rent.

(e) In the earlier suit No. 3893 of 1971 one of the partners of KSM Mr. Narinchandra Kothari had stated on affidavit before the Court that defendants have been permitted occasionally to store their excess goods in suit premises and the evidence of D.W.2 Sureshchandra Kothari is contrary to this evidence and, as such, his evidence cannot be relied upon.

It is, therefore, submitted that the order of the City Civil Court may be set aside and the appeal be allowed.

8. The learned Counsel appearing on behalf of respondents submitted that section Sub-section 4(a) of Section 4 of the Bombay Rent Act starts with non-obstante clause and, therefore, Section 4(1) of the Rent Act would not be applicable and the respondents would be protected tenants u/s 4(4)(a) of the Bombay Rent Act. Reliance was placed by the Counsel appearing on behalf of respondents on the judgment of the Apex Court in Kanji Manji (supra) and Nagji Vallabhji & Co. (supra) The learned Counsel for respondents further submitted that the appellants witness Navneetlal Zaveri had no personal knowledge of the transaction which took place between the said KSM and respondents whereby respondents were put in possession of the suit premises and that the entire evidence given by him was a hearsay evidence. He relied on paragraphs 6, 7, 13 and 16 of his evidence. He further invited my attention to para 17 of his evidence and submitted that timber was stored by the appellants predecessor and could be stored on the property leased by the appellants predecessor from the BPT. He further invited my attention to the evidence of appellants witness Navneetlal Zaveri and more particularly paragraphs 19, 20, 21, 22, 23 and 25 and submitted that from the said evidence it is clear that the rent receipts had been admitted by appellants. He then invited my attention to the evidence led by one John Mohammed Ismail, partner of respondents particularly in paragraphs 1, 2, 10 and 13 in which this witness has stated that an amount of Rs. 6500/was deposited with KSM who had issued receipt to that effect. He submitted that from the evidence of this witness, it is clear that there were two separate entrances to the premises and respondents were exclusively in occupation of the suit premises. He also invited my attention to the evidence of S.B. Kothari and more particularly paragraphs 2, 3, 6, 8, 10, 11 and 12 and also the evidence of Abubaker Ismail Memon, partner of respondent No. 3. He submitted that from this evidence, it is clear that respondents are tenants in respect of the suit premises and, in any event, are protected licensees in respect of the suit premises in view of Section 15A of the Bombay Rent Act.

9. I have heard the learned Counsel appearing on behalf of plaintiffs and defendants.

10. The following points fall for determination before this Court:

(1) Whether the provisions of the Bombay Rent Act are not applicable to the suit premises in view of Section 4(1) and 4(a) of the Bombay Rent Act?

(2) Whether City Civil Court has jurisdiction to entertain the plaint and the suit in

the present form is maintainable in the Civil Court?

(3) Whether the plaintiffs prove that defendants are trespassers in the suit premises?

(4) Whether City Civil Court could have given a finding that defendants are tenants/protected licensees under the Bombay Rent Act.

11. So far as the first submission made by the learned Counsel appearing on behalf of plaintiffs in respect of non- applicability of provisions of Bombay Rent Act is concerned, in my view, the said submission cannot be accepted for the following reasons:

(i) Section 4 of the Bombay Rent Act lays down that the Act shall not apply to any premises belonging to the Government or the Local Authority. Section 4(1) of the said Act reads as under:

4.(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, [licence] or other like relationship created by a grant from [or a licence given by] the Government in respect of premises [requisitioned or taken on lease [or on licence] by the Government, including any premises taken on behalf of the Government on the basis of tenancy [or of licence] or other like relationship by, or in the name of any officer subordinate to the Government authorized in this behalf;] but it shall apply in respect of [premises let, or given on licence, to] the Government or a local authority [or taken on behalf of the Government on such basis by, or in the name of such officer.]

However, Section 4(4)(a) carves out an exception to this rule and lays down that under certain circumstances the provisions of Bombay Rent Act would still apply in a case where the land belongs to Government or Local Authority, however, a building on the said land is erected by any person. Section 4(4)(a) and 4(4)(b) of the said Act read as under:

[(4)(a) The expression premises belonging to the Government or a local authority in Sub-section (1) shall notwithstanding anything contained in the said Sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government, or a local authority under an agreement, lease, [licence] or other grant, although having regard to the provisions of such agreement, lease, [licence] or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) notwithstanding anything contained in Section 15 such person shall be entitled to create a tenancy in respect of such building or a part thereof [whether, before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959.].

(ii) Conjoint reading of the aforesaid two provisions clearly reveals that if any

person other than the Government or Local Authority, erects a building on the land which is given by State Government or Local Authority under lease which permits construction to be put up on the said land then in respect of the premises in the building, provisions of Bombay Rent Act would apply. In my view ratio of the judgment in Kanji Manji (supra) and in Nagji Vallabhji & Co. (supra) on which reliance is placed by the learned Counsel appearing on behalf of respondents, would squarely apply to the facts of the present case.

12. Counsel appearing on behalf of plaintiffs has relied on number of judgments in support of his submission that the provisions of the Bombay Rent Act would not apply to the premises in question. In support of his submission he relied upon the judgment of the Apex Court in Kanji Manji (supra), Nagji Vallabhji & Co. (supra) and in Raizada Topandas and Another Vs. Gorakhram Gokalchand, .

13. In my view, the judgments in Kanji Manji (supra) and Nagji Vallabhji & Co. (supra) on which reliance is placed by plaintiffs, will not support the case of plaintiffs and that the ratio of the said judgment supports the submissions made by the learned Counsel appearing on behalf of defendants. The ratio of other three judgments will not apply to the facts of the present case.

14. Before dealing with the facts of the aforesaid cases and discussing as to how the ratio of the judgments in Kanji Manji (supra) and Nagji Vallabhji & Co. (supra) supports the case of defendants and the ratio of the judgments on which reliance is place by plaintiffs will not apply to the facts of the present case, I shall first consider whether the Bombay Port Trust is a Local Authority. The learned Single Judge of this Court in Ram Ugrah Singh Girjarsingh and Another Vs. Board of Trustees of the Port of Bombay, has, after considering the provisions of Section 3(26) of the Bombay General Clauses Act, 1984 and number of judgments of the Apex Court and this Court, categorically held that the Board of Trustees of the Port of Bombay is a Local Authority. That being the position, the question which now will have to be seen is, whether the premises which are the subject matter of the proceedings in this case are exempted from the provisions of the Bombay Rent Act by virtue of the provisions contained in Section 4 of the said Act. As noted by me hereinabove, the conjoint reading of two provisions viz Section 4(1) and Section 4(4)(a) of the Act, clearly indicates that before provisions of Section 4(4)(a) can come into play, the premises should satisfy two conditions viz. (i) the land must be held from the Government or Local Authority under the lease and (ii) lessee under the terms of the lease should have constructed or put up the premises. Only after the said two conditions are fulfilled, the premises in question would then come out of the purview of Section 4(1) and to such premises, provisions of the Bombay Rent Act would become applicable. The circumstances under which Section 4(4)(a) was introduced into the Act has been noticed initially by Chief Justice Chagla in Ram Bhagwandas Vs. Municipal Corporation of the City of Bombay, which was approved by the Apex Court in Kanji Manji (supra). The Apex Court in Kanji Manji (supra) in paragraph 11 has observed as under:

(11) ...The amendment achieved two different things. It enabled the lessee of the particular kind of building described in Clause (a) to create sub-tenancies in spite of the ban against sub-tenancies contained in Section 15. It also excluded from the operation of Sub-section (1) the building specified in Clause (a) of that Sub-section. The amendment said nothing about the relationship of the Government or the local authority, on the one hand, and the lessee on the other, in respect of the land. The word premises in Sub-section (1) could mean the land or the buildings or both. Sub-section (4)(a) dealt only with the buildings and did not deal with the land because it used the word buildings and not the more general word premises. The import of Sub-section (4)(a) of Section 4 was thus limited to buildings and did not extend to land.

In the said judgment in para 13, the Apex Court has observed as under:

(13) In our opinion, though the section is far from clear, the meaning given by the learned Chief Justice is the only possible meaning, regard being had to the circumstances in which this Sub-section came to be enacted. Those circumstances were : In a case in which the holder of the land from a local authority was seeking to evict his sub-tenants, it was held by the Bombay High Court that the matter was governed by the Rent Control Act. This Court held that Sub-section (1) applied and the suit was not governed by the Rent Control Act. The amendment was enacted to cut down by a definition the operation of the words any premises belonging to the Government or a local authority, by excluding only buildings which were occupied by sub-tenants even though the buildings belonged to the Government or continued to belong to it. Clause (b) of Sub-section (4) excluded also Section 15, which prohibited sub-letting by a tenant. That, however, was limited to the case of buildings only, and did not apply to the case of land. In this situation, any action by the Government or the local authority in respect of land falls to be governed by Sub-section (1) and not Sub-section (4) (a), and Sub-section (1) puts the case in relation to land entirely out of the Rent Control Act. The net result, therefore, is that if Government or a local authority wants to evict a person from the land, the provisions of the Rent Control Act do not come in the way. For the same reason, the suit for ejectment does not have to be filed in the Court of Small Causes, as required by the Rent Control Act but in the City Civil Court as has been done in this case.

The Apex Court, however, in the facts of the case which was before it in Kanji Manji (supra) came to the conclusion that the land alongwith buildings were leased out by Government and the lessees were given a concession that they were entitled to remove the buildings within one month after eviction. In view of these facts, therefore, it was held that it was not open to the assignees of the said lessees to claim that ownership of the Government extended only to the land and not to the buildings. The Apex Court, therefore, after laying down the law dismissed the appeal which was filed by the appellants.

15. In the case of Maneklal & Sons (supra) the facts were that the Bombay Port Trust granted lease of the said plot of land to one Mustafa Husein for the purpose

of erecting a godown for carrying on commercial activities at monthly rent of Rs. 925/- which was later on increased to Rs. 1456/-. The said lessee Mustafa Husein erected permanent godwon of brick, mortar and cement. He then granted lease of the godown to the petitioners in the SLP. The Port Trust filed a suit against heirs of Mustafa Husein for eviction from the lease and for termination of the tenancy. A decree was passed by the City Civil Court. Petitioners obstructed execution of the decree. A Chamber Summons was filed by Port Trust in the High Court of Bombay for removal of obstruction under Order 21 Rules 97 to 101 of the Civil Procedure Code. It was contended that Petitioners were lessees of the said Mustafa Husein and, therefore, were entitled to protection under the Bombay Rent Act as the said Act applied to the building erected by a lessee from the local authority and as such the Petitioners right of possession was protected under the provisions of the Bombay Rent Act. In the said case, there was no material on record to show that the building lease was granted to the original tenant Mustafa Husein and no evidence was produced before the Trial Court and Division Bench of the High Court and even when the matter came up for admission before the Apex Court, no such lease was produced though time was granted for production of such evidence. In view of these facts, therefore, the Apex Court in para 11 of its judgment came to the following conclusion:

11. In our opinion, in the instant case, in view of the fact that the original lease was only a monthly tenancy and not a building lease, the High Court was right in dismissing the objections on behalf of the petitioners. We find no reason, therefore, to interfere with the order of the High Court. The SLP therefore, fails and is accordingly dismissed without any order as to costs.

Thus, in the said case also, in view of the facts of the said case and since it was not established that the lease in question was a building lease, the SLP was dismissed and the orders passed by the High Court and the Lower Court were affirmed. The facts of the said case being different, the ratio of the said judgment will not apply to the facts of the present case.

16. Even in the case of Ram Ugrah Singh (*supra*), an application was filed in the Small Causes Court at Bombay by the Board of Trustees of the Port of Bombay for eviction of petitioners from the plot of land which was in possession of petitioners under the permission granted by respondents. Petitioners raised a contention that they are tenants of the premises under the provisions of the Bombay Rent Act and they were entitled to get protection under the Bombay Rent Act. It was contended on behalf of the Bombay Port Trust that the premises in question were exempted u/s 4 of the Bombay Rent Act. In the said case, petitioners were in possession of the land which was given to them by the Bombay Port Trust and, therefore, their case would not fall under exception of Section 4(4)(a). Under these circumstances, the submissions made by the learned Counsel appearing on behalf of plaintiffs cannot be accepted.

17. In the case of Nagji Vallabhji & Co. (*supra*), appellants before the Apex Court were sub-tenants of respondent No. 1 Firm in respect of Gala No. 4 in a godown

situated at Dana Bunder in Mumbai. Respondent No. 1 Firm was the tenant of the said premises viz the said godown in which the said Gala was situated having taken a lease of the building in which it was situated alongwith the land on which the building stood, from the BPT. Appellants, under the written agreement were in occupation of the said Gala from time to time for a period of one year each. On termination of lease after expiry of the lease period, appellants claimed that they were sub-tenants and were entitled to protection under the Bombay Rent Act. Suit was filed by respondent No. 1 in Bombay City Civil Court which was decreed and in appeal, Bombay High Court remanded the matter to the City Civil Court for recording findings on two questions viz (1) as to who were lessors of the defendants, whose monthly tenancy commenced in the year 1957 and (2) whether that tenancy was legally and validly terminated. On remand, the Bombay City Civil Court held that the lessors of appellants in 1957 were one Meghji and Kanji and that tenancy of appellants was not validly terminated. In appeal it was held by the learned Single Judge of the Bombay High Court that notice of tenancy dated 3/2/1972 was valid notice and that the provisions of the Bombay Rent Act did not apply to the premises in question. An appeal preferred against the order passed by the learned Single Judge before the Division Bench was also dismissed. The Apex Court, however, in the said case has observed in para 8 as under:

8. ...We may make it clear in this connection that in the present case, the factual position emerging from the record appears to be that the entire building in which the said premises, namely Gala No. 4 is situated belonged to the Bombay Port Trust. That is clear from the contents of Clause (ii) of Paragraph 2 of the SLP preferred by the Appellants as well as the other material on record. It has nowhere been contended at any stage by the Appellants that the building in which the said premises are situated was put up by Respondent No. 1 Firm. We are therefore not concerned with the position of sub-lessee in a building put up by a lessee of the land taken from the Government or a local authority without being under any obligation to do so.

In view of these facts, therefore, the Apex Court in the said case observed that the appellants were not entitled to get protection of the Bombay Rent Act under the provisions of Section 4(4)(a).

18. As observed hereinabove, it is an admitted position that the Bombay Port Trust had given vacant land to KSM. Subsequently, structures were erected by lessee on the said vacant land and, therefore, the premises situated in a building constructed by lessee on the vacant land leased out by the Bombay Port Trust would be entitled to protection of the Bombay Rent Act and the provisions of Section 4(4)(a) would be applicable to such premises. Points No. 1 above is, therefore, answered in the affirmative.

19. The second question which falls for consideration before this Court is : whether the City Civil Court had jurisdiction to entertain the suit which was filed by the plaintiffs. City Civil Court held that it had jurisdiction to entertain the suit

in view of averments made by plaintiff in the plaint. In my view, City Civil Court had rightly held that it had jurisdiction to decide the suit on the basis of averments made in the plaint. It is a well settled in law that plaintiff decides his forum and files his suit. If he establishes correctness of his facts, he will get his relief from the forum chosen. However, if he makes averments in his plaint and frames his suit in a manner not warranted by facts and files a suit before the forum which cannot grant relief he has asked for, then his suit will have to be dismissed. In that case, there will be no question of returning the plaint for presentation before the proper court. For the purpose of finding out whether the court in which the suit is filed has jurisdiction or not, averments made in the plaint will have to be taken into consideration.

20. In the present case, plaintiffs have come to the Court with a specific case that defendants are trespassers on the said property. No averment is made in the plaint that defendants are licensees or tenants. Therefore, merely because defendants make an averment in Written Statement that they are tenants or licensees, that by itself would not oust the jurisdiction of the Court. The Apex Court in *Raizada Topandas and Another Vs. Gorakhram Gokalchand*, has observed as under:

(7) In answering this question it is perhaps necessary to refer to the general principle which admittedly governs the question of jurisdiction at the inception of suits. This general principle has been well explained in the Full Bench decision of the Allahabad High Court, *Ananti v. Chhannu* reported in ILR (1929) All. 501, F.B. and has not been disputed before us. It was observed there (pp.507, 508):

The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If he frames his suit in a manner not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief.

...If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognizable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the nature of the suit, it is not cognizable by the class of court to which the court belongs, the plaintiffs suit will have to be dismissed in its entirety. Having regard to the general principle stated above, we think that the view taken by the High Court in this case is correct. Section 28 no doubt gives exclusive jurisdiction to the Court of Small Causes to entertain and try a suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises to which any of the provisions of Part II apply; it also gives exclusive

jurisdiction to decide any application under the Act and any claim or question arising out of the Act or any of its provisions-all this notwithstanding anything contained in any other law. The argument of learned Counsel for the appellants is that the section in effect states that notwithstanding any general principle, all claims or questions under the Act shall be tried exclusively by the Courts mentioned in the section, e.g. the Court of Small Causes in Greater Bombay, and it does not matter whether the claim or question is raised by the plaintiff or the defendant. The argument is plausible, but appears to us to be untenable on a careful scrutiny. We do not think that the section says or intends to say that the plea of the defendant will determine or change the forum. It proceeds on the basis that exclusive jurisdiction is conferred on certain courts to decide all questions or claims under the Act as to parties, between whom there is or was a relationship of landlord and tenant. It does not invest those courts with exclusive power to try questions of title, such as questions as between the rightful owner and a trespasser or a licensee, for such questions do not arise under the Act. If, therefore, the plaintiff in his plaint does not admit a relation which would attract any of the provisions of the Act on which the exclusive jurisdiction given u/s 28 depends, we do not think that the defendant by his plea can force the plaintiff to go to a forum where on his averments he cannot go. The interpretation canvassed for by the appellants will give rise to anomalous results; for example, the defendant may in every case force the plaintiff to go to the Court of Small Causes and secondly, if the Court of Small Causes finds against the defendants plea, the plaint may have to be returned for presentation to the proper Court for a second time. Learned Counsel for the appellants has argued in the alternative that the Court of Small Causes need not return the plaint a second time, for his contention is that that Court has exclusive jurisdiction to decide the case whenever a claim is made under the Act even though the claim is found to be false on trial. We do not think that this contention can be accepted as correct, for to do so would be to hold that the Court of Small Causes has exclusive jurisdiction to decide questions of title, which is clearly negated by Section 29-A. Anomalous results may not be a conclusive argument, but when has regard to the provisions in Part II it seems reasonably clear that the exclusive jurisdiction conferred by Section 28 is really dependent on an existing or previous relationship of landlord and tenant and on claims arising under the Act as between such parties.

Apex Court also approved the observations made by the Bombay High Court in the case of *Govindram Salamatrai v. Dharempal* reported in 53 Bom. L.R. 386.

21. For the aforesaid reasons, therefore, in my view, City Civil Court had jurisdiction to try and entertain the said suit. Point No. 2 above is, therefore, answered in the affirmative.

22. The next question which falls for consideration is : whether plaintiffs have proved that defendants are trespassers on the suit property?

23. Plaintiffs examined Navneetlal Zaveri P.W.1. Defendants, on the other hand,

examined John Mohammed Ismail D.W.1, Sureshchandra Bachubhai Kothari D.W.2, Abubakar Ismail Memon D.W.3 and Harendra Kapiral Parekh D.W.4.

24. Plaintiffs witness (P.W.1) has stated that on 1/11/1970, Bombay Port Trust admitted plaintiffs as lessees in respect of the suit property. He also stated that they are owners of the structures standing on the said land. He further admitted that these structures were already on the said land when it was leased to plaintiffs by the Port Trust. He has further stated that M/s Kothari Saw Mills were in possession of the said land with structures thereon. He has stated that since M/s Kothari Saw Mills could not pay the rent and had committed default in payment of rent, plaintiffs paid the arrears of rent of M/s Kothari Saw Mills amounting to Rs. 1,42,000/-and the Trust inducted plaintiffs as lessees. He further stated that he knew defendants since November, 1970 and that they had occupied one structure on the land known as D-1 (Ground Floor) where they were storing timber. He has stated that when he made inquiry with partners of M/s Kothari Saw Mills, they informed him that they had given ground floor of the suit structure to defendants casually for storing timber. He further stated that defendants had given plaintiffs a cheque of about Rs. 1900/-but it was refused by them and no permission was granted by them to defendants to occupy the structure. He has further stated that on 9/5/1971, there was fire in the premises and the structure was damaged and on 27/5/1971, plaintiffs filed suit against defendants for possession of the structure. Injunction was granted by Court, restraining defendants to reconstruct the structure. He has stated that in spite of fire, defendants continued to occupy the ground floor of the structure. Plaintiffs obtained permission from the Corporation to reconstruct the structure. However, defendants did not cooperate and, therefore, present suit was filed and in this suit consent terms were filed and defendants were allowed to complete the construction and, thereafter, old suit was withdrawn. In cross-examination, he admitted that M/s Kothari Saw Mills had informed him that all other occupants agreed to vacate their respective premises except the defendants. He further stated that, according to plaintiffs, since defendants could not produce any rent receipts, they were trespassers. This witness was shown receipt dated 11.10.1965 signed by N.B. Kothari, partner of M/s Kothari Saw Mills. He admitted that the said receipt was signed by Kothari for M/s Kothari Saw Mills. He, however, stated that premises for which deposit was given was not mentioned. The other receipts dated 9.1.1968, 4.2.1969, 9.5.1969, 27.6.1969, 27.12.1969 and 12.8.1970 were shown to him. He admitted that these receipts were signed by M/s Kothari Saw Mills. He, however, stated that since description of the premises was not specifically mentioned in these receipts, he felt that they did not pertain to the suit premises.

25. The witness John Mohammed Ismail -D.W.1 who was examined on behalf of defendants, on the other hand, stated that they had taken the premises on rent from M/s Kothari Saw Mills at the rate of Rs. 75/-per month and that they had deposited an amount of Rs. 6500/-as deposit and a receipt was given by M/s Kothari Saw Mills of receiving deposit of Rs. 6500/-from defendants. He further

stated that rent receipts at Exhibits 4 to 9 were in respect of the suit premises. He further stated that there were two doors in the ground floor one was for defendants and other was for persons to go to first floor by a stair-case. He further stated that stair-case door and stair-case were separated by wooden planks. He further stated that they had taken two premises; one was the suit premises and in other premises they had their own Saw Mill. They were paying Rs. 600/-per month as rent of the Saw Mill and the area of the same was 3128 sq.ft. He further stated that they had applied to Bombay Municipal Corporation for license to store timber and after taking the suit premises on rent, defendants got license in 1978 which was produced at Exhibit-10. He also produced Shop Establishment License at Exhibit-11. In the cross- examination, a suggestion was put to this witness (D.W.1) that the rent receipt at Exhibit-3 and Exhibits 4 to 9 were in respect of the Saw Mill and not the suit premises. Further, an attempt was also made to show that other rent receipts which were filed with the affidavit of documents were not produced and if those receipts were produced, it would show that the receipts were in respect of some other premises. Further, an attempt was made to show that defendants were not in exclusive use of the suit structure. All these suggestions have been denied by this witness. Further, an attempt was made to show that Written Statement was filed after a lapse of 6 years from filing of the suit and, therefore, the said receipts were fabricated since they were not filed in earlier litigation.

26. The other defence witness viz Sureshchandra Bachubhai Kothari D.W.2 who was examined by defendants admitted that defendants were their tenants and they were occupying a place in the suit premises. He has stated that after the plot was taken on lease, they had constructed several structures on the land which was assigned to plaintiffs and that defendants were occupying the suit structure. He further admitted that they were receiving Rs. 70/-to Rs. 80/per month from defendants in respect of the suit premises and Rs. 600/-in respect of other premises on which defendants had their Saw Mill. He admitted receipts at Exhibits-3 to 9 which were shown to him. He further admitted that Exhibits-3 to 8 were written and signed by his late brother N.B. Kothari and Exhibit-9 was written and signed by him and that they pertain to the suit premises. He further admitted that there were in all three doors to the suit premises. In cross-examination, an attempt was made to show that defendants were not in exclusive use of the premises. The suggestion made to this witness that the receipts were in respect of plot No. 44 was not admitted by him. An attempt was also made to show that the said receipts were not signed by his brother. However, the said suggestion was denied by him. This witness was asked to bring the agreement in respect of other plot. However, the said agreement could not be produced since it was not found. He was also asked to produce Ledger and Books of Accounts. He has stated that he could not produce account books from 1966 till 1970.

27. D.W. 3 Abubakar Ismail Memon was examined by defendants who was partner in defendant firm since 1966. He also stated that they were tenants of

the suit premises since 1966 and they had agreed to pay Rs. 75/-per month as rent and they had given deposit of Rs. 6500/-to M/s Kothari Saw Mills. He has stated that there was mention about these deposits in his account books. He further stated that accounts were kept during the regular course of business and there was debit entry of Rs. 6500/-recorded on 12/10/1966. This amount, according to him, was given by cash and cheque. An amount of Rs. 4,500/-was given by cheque No. 1217 and an amount of Rs. 2,000/-was given in cash. True copy of the extract at Exhibit-12 was brought on record. He further stated that there was entry of Rs. 75/-in respect of the rent paid in the month of October, 1966 and Exhibit-13 was the extract of the same. However, debit entry in respect of the payment of Rs. 75/-was brought on record at Exhibit-14. Exhibit-15 was the extract of rent paid on 19/12/1966 of Rs. 75/-. He also stated that the corresponding entries were made in Khate Vahee. Several amounts were debited in the accounts of M/s Kothari Saw Mills and it is stated that certain amounts which were shown , included rent of Rs. 75/-per month. In the cross-examination of this witness, an attempt was made to show that there was discrepancy in the accounts maintained by defendants. Further, an attempt was made to show that rent receipts were in respect of some other premises and not the suit premises.

28. Defendants, thereafter, examined D.W. 4 -Harendra Kapiral Parekh who was working as Inspector in the Estate Department of Bombay Port Trust. The correspondence in respect of the Plots sold by M/s. Kothari Saw Mills was produced by him. He also produced letter dated 12/6/1971 from his Legal Department, at Exhibit-28.

29. From the entire evidence which is brought on record, in my view, it has not been established by plaintiffs that defendants are rank trespassers. On the contrary, defendants have produced evidence on record in the form of rent receipts, deposit receipts, correspondence between BPT and plaintiffs, which clearly indicate that defendants were in possession since 1966 as tenants of the earlier lessees M/s KSM. An attempt has been made to show that rent receipts which were produced on record pertain to some other premises. Plaintiffs have not been in a position to shake the testimony of defendants witnesses. Partner of M/s KSM also admitted that they had accepted deposit of Rs. 6500/-and were receiving rent of Rs. 75/-per month. The correspondence between BPT and plaintiffs also clearly shows that there was clear understanding between plaintiffs and BPT that plaintiffs had stepped into the shoes of M/s KSM and that though a request had been made by plaintiffs to BPT to vacate defendants from suit premises, this offer was not accepted. The letter at Exhibit-28 clearly shows that the Bombay Port trust also had accepted the position that M/s KSM had tenants on the said premises. Defendants witnesses have admitted rent receipts which have been issued in respect of the deposit at Exhibit-3 and rent receipts at Exhibits 4 to 9. Defendants witnesses as well as partner of M/s KSM also have identified signature of the partner of M/s KSM who had signed these receipts. Copy of the extract also indicates that Rs. 6500/-was paid as deposit to M/s KSM

and Rs. 75/-per month was paid from time to time. All this evidence which is brought on record by defendants clearly established that they are not trespassers in respect of suit premises and that they are in lawful occupation of the suit premises. Plaintiffs, therefore, in my view, have failed to establish that defendants are trespassers in respect of the suit premises. Point No. 3 above is, therefore, answered in the negative.

30. The only other question which needs to be decided is : whether Civil Court has jurisdiction to give a declaration that defendants are lawful tenants/protected licensees under the provisions of the Bombay Rent Act? It was strongly urged by the learned Counsel for plaintiffs that no such declaration could have been given by the City Civil Court since only the Small Causes Court could make such a declaration under the Bombay Rent Act. It is true that the City Civil Court, Bombay could not have given a declaration that defendants are protected tenants/licensees. However, since plaintiffs chose to file the suit in the City Civil Court on the ground that defendants are trespassers and since defendants had raised a specific plea that they are protected tenants/licensees under the Bombay Rent Act, upon evidence being produced by defendants to that effect, an observation had to be made by the City Civil Court that they are not trespassers but are tenants. It is no doubt true that such a declaration cannot be made by City Civil Court in a suit which is filed by plaintiffs for a declaration that defendants are trespassers. To that extent, submissions made by Counsel for plaintiffs will have to be accepted. In a case where City Civil Court comes to the conclusion that plaintiffs have not proved their case that defendants are trespassers then only option which is available with the City Civil Court is to dismiss the suit. Apex Court has consistently taken a view that, in such cases, Civil Court has to dismiss the suit and the question of returning the plaint for being presented before the appropriate forum does not arise. Point No. 4 is, therefore, answered in the negative.

31 For the reasons stated hereinabove, the findings recorded against the aforesaid points are as under:

POINTS

- (1) Whether the provisions of the Bombay Rent Act are not applicable to the suit premises in view of Section 4(1) and 4(a) of the Bombay Rent Act?
- (2) Whether City Civil Court has jurisdiction to entertain the plaint and the suit in the present form is maintainable in the Civil Court?
- (3) Whether the plaintiffs prove that defendants are trespassers in the suit premises?
- (4) Whether City Civil Court could have given a finding that defendants are tenants/protected licensees under the Bombay Rent Act.

FINDINGS

Yes

Yes

No.

No.

32. In the result, appeal filed by the original plaintiffs is dismissed. Under the circumstances, there shall be no order as to costs.