
(1995) 05 GUJ CK 0007
In the Gujarat High Court

Madhuben Maganlal Raychuri

APPELLANT

Vs

Ramchandra Bechardas and Others

RESPONDENT

Date of Decision : 01-05-1995

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)(b),
29, 29

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1996) 1 GLR 727

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—The present revision u/s 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) is directed against the Judgment and Decree recorded in H.R.P. Suit No. 238 of 1974 by the Court of Small Causes, Ahmedabad and confirmed in Regular Civil Appeal No. 302 of 1978 by the Appellate Bench of Small Causes Court at Ahmedabad.

2. The petitioner is the original plaintiff who instituted above suit for declaration that she is the tenant of the suit premises bearing Municipal Census No. 2/112/5 situated in Jahangirpura Revenue Scheme in Bhogilal's Chawl No. 2 and also for perpetual injunction restraining the defendants from obstructing the plaintiff in the enjoyment of the suit premises. The plaintiff also prayed for fixation of standard rent. According to the case of the original plaintiff suit premises belonged to opponents-original defendant Nos. 1 to 4 and that original defendant No. 5, one Gokul Mohan who was the tenant in the suit premises in the year 1958 had vacated and thereafter plaintiff became the tenant at a monthly rent of Rs. 3.50 ps. and since then she has been residing in the suit premises along with her family. The opponents-original defendant Nos. 1 to 4 appeared and resisted the suit by filing written statement, Exh. 17 inter alia contending that the plaintiff and original defendant No. 1 in collusion have filed false suit preventing them from enjoying the fruit of the decree passed in their favour for eviction in H.R.P. Suit No. 5838 of 1971. The averments made in the plaint were seriously

challenged. The right of the plaintiff to be the tenant in a suit premises is denied. The original defendant No. 5 did not appear and resist the suit. The suit proceeded ex-parte.

3. In the light of the facts and circumstances and the pleadings between the parties, issues came to be settled at Exh. 22. After hearing the parties and considering the material on record, the trial Court reached to the conclusion that the petitioners-original plaintiff has failed to prove that she is the tenant of original defendant Nos. 1 to 4 in suit premises. The judgment and decree passed in the suit by the trial Court came to be challenged in the aforesaid appeal which also came to be dismissed. Therefore, the petitioner has come up before this Court in this revision.

After having examined the facts and circumstances and the evidence on record, this Court has no hesitation that the present revision u/s 29(2) of the Bombay Rent Act, is meritless and is required to be dismissed with costs. Both the Courts have consistently and concurrently held on facts that the petitioner-original plaintiff has failed to prove that she is a tenant in respect of suit premises at a monthly rent of Rs. 3.50 ps. as alleged. The trial Court has analysed the evidence threadbare. The appellate Court has also considered all the facts and circumstances and the evidence in greater details.

4. The appellate Court on facts has found that original defendant No. 5, Gokal Mohan was as such in possession of the suit premises upto the month of April 1961 by virtue of the documentary evidence produced at Exh. 50. This documentary evidence produced at Exh. 50 has disproved the plaintiffs claim that she occupied the suit premises in the year 1958. In fact it is found from the facts by the appellate Court that original defendant No. 5, Gokal Mohan has deposited the rent of the suit premises upto January 1962. It is an admitted fact that original defendant Nos. 1 to 4 have filed H.R.P. No. 2955 of 1957 against Gokal Mohan and the decree for possession was passed on 18-12-1972 and the defendant Nos. 1 to 4 have thereafter filed Execution Petition No. 1167 of 1972 against Gokal Mohan and then a warrant for delivery of possession was issued by the Court in the execution proceedings. It was reported by the bailiff when he went to execute the warrant of delivery of possession that the suit premises was locked and before further action could be taken in the execution petition by the original defendant Nos. 1 to 4, the petitioner-plaintiff filed the present suit against the defendants. The earlier suit was decreed against original defendant No. 5, Gokal Mohan on 29-4-1961. The finding recorded by the trial Court and confirmed by the Appellate Court is fully justified. The suit was rightly dismissed and the decree passed in the suit was rightly confirmed in the appeal.

5. No doubt, it is true, the powers of this Court in revision u/s 29(2) or the Bombay Rent Act are not so limited u/s 115 of the Code of Civil Procedure, 1908 (Code). However, what is contemplated by Section 29, Sub-section (2) is to enable this Court to call for the record of a case to satisfy itself that the decision rendered impugned in that revision is according to law. The phrase "according to

law", means the Court has to consider whether impugned decision is in any way suffering from errors of law or facts resulting into miscarriage of justice. In the present case, it cannot be said that the impugned eviction decree on aforesaid two grounds is not according to law. Nothing has been shown which would warrant the interference of this Court u/s 29 Sub-section (2) of the Bombay Rent Act. Nothing has also been placed on record to show that even after the passing of the decree in the appeal u/s 12(3)(b), the tenant has made efforts to show her readiness and willingness so as to earn protection from ejection on the ground of non-payment of rent. The consistent and concurrent finding of fact recorded by both the Courts that the original defendant No. 1 -tenant has sub-let the demised premises to original defendant No. 2, is also supported by the facts and circumstances and the evidence on record.

6. Having regard to the facts and circumstances and the provisions of Section 29 of the Bombay Rent Act, this Court has no hesitation in finding that the present revision is totally meritless and is required to be dismissed with costs. Accordingly, it is dismissed with costs. Rule is discharged. Ad-interim relief shall stand vacated.