

(1995) 09 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 2599 of 1995

Madhukar R. Javle

APPELLANT

Vs

Baskar Ramnath Shibad

RESPONDENT

Date of Decision : 19-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 18, Order 26 Rule 9, Order 39 Rule 7

Constitution of India, 1950 — Article 227

Citation : AIR 1996 Bom 96 : (1996) 2 BomCR 408 : (1996) 1 MhLj 245

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar with D.M. Vora and R.D. Vora, for the Appellant; V.A. Thorat with B.N. Vaishnawa, N.J. Deveshree, R.D. Dave instructed by M/s. N.N. Vaishnawa and Co., for the Respondent

Judgement

A.P. Shah, J.—By this petition under Art. 227, the petitioner seeks to challenge an order passed by the Small Causes Court Bombay, granting respondent notice inspection of the flats situated on the section and third floor of the suit building, which are not subject-matter of the suit. Apparently, the Small Cause Court has taken recourse to provisions of O. 39, R. 7 (a) of the C.P.C. The short question is whether the lower Court was right in granting inspection of premises which are not the subject - matter of the suit and are in possession of third parties.

2. Before I deal with the rival contention I would like to state briefly the facts leading this petition, which are few and almost undisputed. The petitioner is the owner of the building known as "Fair Filed Annexes" situated at Veer Savarkar Marg, Mahim, Bombay. The respondent is the tenant of flat No. 3 on the second floor of the said building. The petitioner has filed R. A. E. & R. Suit No. 1504/5511 of 1982 against the respondent for possession on the ground of default in payment of rent. The respondent has filed R.A.N. No. 437/SR of 1982 for fixation of standard rent. Both these proceeding are being heard together by the order of the Chief Judge of the Small Cause Court.

3. The respondent has taken out Notice No. 2031 of 1995 for allowing the respondent and his architect and authorised agent to enter upon and take inspection of two flats, namely flat No. 6 on the second floor and flat No. 7 on third floor, which are admittedly not the subject - matter of the proceeding before the Small Cause Court. According to the respondent, such inspection is necessary for the purpose of determining the controversy between the parties about the standard rent of the suit flat No. 3, which is the subject - matter of the suit. It is the case of the respondent that the landlord himself was in occupation in respect of one of these two flats and he was paying rent of Rs. 1,000/- per month. It is said that the area of the said flats is equal to the suit flat and, therefore, the standard rent of the suit flat should be the same i.e. Rs. 1,000/- per month. The respondent says that in order to establish that the area and location of these flats are identical, an inspection is necessary.

4. The petitioner has opposed the application vehemently on the ground that such inspection is totally uncalled for. It is contended that the Court has no jurisdiction to grant such inspection, since, admittedly, the two flats in question are not the subject-matter of the suit. The petitioner has also shown his willingness to supply copies of the sanctioned plans of the building. The petitioner, therefore, contended that the order of inspection should not be passed.

5. By an order dated June 16, 1995, the Small Cause Court has made the notice taken but by the respondent absolute. It is necessary to reproduce the operative part of the order of the Small Cause Court, because the Small Cause Court has issued some additional directions in issued some to ensure that the occupant of the said two flats should not be inconvenienced in any manner. The order read:-

"The plaintiff is directed to give inspection of the flats situated on the second floor and third floor of the suit property as prayed on, 19th may, 1995 between 10.00a.m and 1.00 p.m.

Parties directed to give inspection in notice in advance to both the tenants before inspecting and measuring premises.

Defendant is also directed to supply copy of this Judgment and Order to the said two tenants for completing smooth inspection, measurement of the said two flats well in advance.

Parties are directed to take the precaution that they will complete the inspection of the said two flats within about three hours by avoiding any unwarranted inconvenience to the occupants thereof."

6. Mr. Jahagirdar, learned counsel for the petitioner, strenuously contended that the impugned order is without jurisdiction. Mr. Jahagirdar says that Rule 7 (a) of Order 39 basically relates to preservation of the property and the type of the order, which is passed by the Small Cause Court, is not within the scope of Rule 7 (a) Mr. Jahagirdar says that is not open for the Court to direct inspection of the premises, which is not the subject - matter of the suit. Mr. Jahagirdar also says

that in any event it was obligatory on the part of the trial Court to issue prior notice to the occupants of the flat No. 6 and 7 before passing any such order.

7. At the outset, it must be mentioned that Rule 7 (a) is not restricted to the subject-matter of the suit. The rule clearly empowers the Court to make an order for inspection of any property, which is the subject - matter of the suit of which any question may arise therein. At this stage, a reference may also be made to Order 18, Rule 18, which provides that the Court may at any stage of a suit inspect any property or thing concerning which any question may arise. Similarly, under Order 26, Rule 9, in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as he thinks fit directing him to make such an investigation and to report thereon to the Court. In view of the aforesaid provision, it is not possible to accept the contention of Mr. Jahagirdar that in exercise of the powers granted to the Court under the Code, the Court is precluded from directing inspection of some other property adjacent to the suit property should such inspection be necessary in the interest of justice. In my opinion, the Scope of Rule 7 (a) is wide enough to confer power on the Court to order inspection even in respect of properties, which are not the subject-matter of the suit; provided such inspection is necessary for determination of the controversy before the Court. At this stage, I may mention that in a somewhat similar situation *Guha, J. of Calcutta High Court* has granted inspection of the flats, which were not the subject-matter of suit. *Sankar Lal Daga v. Phulchand Agarwalla* ILR (1960) 1 Cal 529. In the case, on an application made by the tenant to the Rent controller for fixation of fair rent the landlord applied for a direction on the Inspector to take measurement of an adjacent similar tenancy in the same premises. Access to the premises was, however, refused by the tenant. The question arose whether the Rent Controller could enforce an order for inspection of the adjoining tenancy. The question was answered in the affirmative by the learned Judge. Thus I do not find any error of infirmity in the impugned order. The order is passed within the four corners of the provision of Order 39, Rule 7 (a) and no exception can be taken of such order, which is an interlocutory order.

8. Mr. Jahagirdar next contended that the Small Cause Court ought to have issued notice to the occupants of the said flat Nos. 6 and 7 before issuing the order of inspection. Mr. Jahagirdar urged that the commission cannot be directed to enter upon property of stranger and inspect property, which is not subject matter of the suit without prior notice to such party. Mr. Jahagirdar placed reliance upon a decision of the Mysore High Court in *Narasimha v. Sengodi* AIR 1955 Mys 79. There cannot be any quarrel with the proposition laid down by the Mysore High Court. But, in my opinion, the grievance, if any, has to be made by the occupants of the flats and not by the present landlord. In any case, the trial Court has taken necessary precaution in order to see that the work of inspection is finished within the minimum period and no inconvenience is caused to the occupants of the flats. Therefore, I do not see any reason to issue any prior

notices to the said occupants. Revision Application therefore, fails and the same is dismissed with costs.

9. It has been brought to my notice that the date fixed by the trial Court for inspection is already expired and, therefore, a fresh date, is required to be fixed. It is, therefore, directed that the inspection will be taken in terms of the order of the trial Court on October 20, 1995.

Certified copy expedited.

10. Revision dismissed.