

(1979) 05 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Revision Application No. 72 of 1978

Maganlal Parsottamdas Sevniwala

APPELLANT

Vs

Chimanlal Dahyabhai Modi

RESPONDENT

Date of Decision : 03-05-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Section 24
Easements Act, 1882 — Section 60

Citation : AIR 1980 Guj 14 : (1980) GLR 1002

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Advocate : P.B. Majmudar, for the Appellant; P.V. Nanavati, for the Respondent

Judgement

1. The plaintiff-tenant filed in the Court, of the Civil Judge (Junior Division) at Surat the present suit for a declaration that he is entitled to use the latrine situate on the ground floor of the building of which the suit premises form a part. He also prayed for a permanent injunction restraining the defendant-landlord from interfering with his use of the latrine. The premises in the occupation of the plaintiff-tenant consist of a shop on the ground floor. The latrine in question is situate on the otta of the house of which the plaintiff's shop forms a part.
2. In defence it was contended by the defendant-landlord that the plaintiff has no such right. He pleaded that it was not let out to the plaintiff-tenant.
3. The learned trial Judge found that the defendant-landlord had not let out the latrine in question to the plaintiff-tenant. He, therefore, dismissed the suit.
4. On appeal to the District Court by the plaintiff, the learned appellate Judge confirmed the finding that latrine was not let out by the defendant to the plaintiff. However, he held that as a tenant of a part of the building to which the latrine in question was attached, the plaintiff had an irrevocable license to use it. He, therefore, decreed the plaintiff's suit. It is that decree which is challenged by

the defendant in this Civil Revision Application.

5. Mr. Majumdar who appears on behalf of the defendant-landlord has raised a number of contentions. His first contention is that the subject matter of the suit was not governed by S. 28 of the Bombay Rent Act and that, therefore, the present suit could not have been filed under the Rent Act. The proposition which he has tried to make out is that the claim to an irrevocable license made by the plaintiff-tenant is not a claim or question arising under the Bombay Rent Act. It cannot be gainsaid that the Court under S. 28 of the Bombay Rent Act has Jurisdiction, inter alia, "to deal with any claim or question arising out of this Act or any of its provisions.....". The question, therefore, which I am required to answer is whether the claim to an irrevocable license which a tenant makes against his landlord is "a claim or a question" arising out of the Bombay Rent Act or any of its Provisions.

6. A claim to an Irrevocable license simpliciter will certainly not fall within the ambit of S. 28 of the Bombay Rent Act but when a tenant protected by the Bombay Rent Act claims an irrevocable license to a latrine for the beneficial use of the premises let out to him, it is a claim which, in my opinion, arises out of the provisions of the Bombay Rent Act. Without any access to the latrine, the premises let out to a tenant will be rendered unusable or uninhabitable. Therefore, an irrevocable license must be inferred from the terms of the tenancy in order to enable the tenant to make beneficial use of the premises let out to him which in its entirety forms a part of a claim which he can make against his landlord under the provisions of the Act. In other words, it forms a part of a claim arising out of the Bombay Rent Act because it is to be inferred from the terms of the tenancy. Therefore, under S. 28 of the Bombay Rent Act the plaintiff-tenant could file the Present suit against the defendant. It was a competent suit.

7. The second contention which Mr. Majumdar has raised also relates to jurisdiction. There is no doubt about the fact that the present suit was filed on 10th June 1972 when there was no Provincial Small Cause Court at Surat. Small Cause Court at Surat was established on 14th July, 1975. Thereafter the learned trial Judge decided the suit. Relying upon the provisions of S. 28, Mr. Majumdar has jurisdiction to try the above suit after 14th July 1975 was the Provincial Small Cause Court established at Surat and not the Court of the Civil Judge (Junior Division) at Surat. In other words, the argument which Mr. Majumdar has raised is this. Even though the suit on the date of its inception was validly instituted, it could not be tried by the learned trial Judge and ought to have been transferred to the Provincial Small Cause Court established at Surat on 14th July 1975.

8. Transfer of a suit is a positive act. What is expressly provided to be transferred stands transferred to the new Court. Merely because a Court is bifurcated, it does not mean that a suit which was on the date of its inception validly instituted ceases to be within the jurisdiction of the Court of its institution and automatically stands transferred to the new Court or that it should necessarily be

transferred to the new Court. Mr. Majmudar has not been able to point out to me any provision which shows that suits validly instituted in other Courts before 14th July 1975 were required to be transferred to the Small Cause Court at Surat on its establishment on 14th July 1975. He has relied upon sub-section (2) of S. 28 in that behalf to the Sub-section (2) of S. 28 has no application to the present case because what sub-section (2) of S. 28 Provides is the withdrawal of the suit by the learned District Judge and transferring it to some other Court. This is not a case of that type. The second argument which Mr. Majmudar has raised, therefore, fails and is rejected.

9. The third argument which Mr. Majmudar has raised relates to the reasoning which the learned appellate Judge has given in his judgment. According to the learned appellate Judge the learned trial Judge has jurisdiction to try the present suit because it related to the enforcement of an irrevocable license. The learned appellate Judge has tried to show that enforcement of an irrevocable license is within the Jurisdiction of the Court of Civil Judge (Junior Division) at Surat and that, therefore, the present suit was competently decided by him. That reasoning of the learned appellate Judge does not seem to be sound. The learned Civil Judge (Junior Division) had Jurisdiction to decide the present suit not because it related to the enforcement of an irrevocable license but because it was a validly instituted suit the transfer of which was not provided after the establishment of the Provincial Small Cause Court on 14th July, 1975 at surat. Therefore, it could validly continue to be on the file of the learned Civil Judge (Junior Division) at Surat. He could, therefore, try and decide that suit even though the claim made by the plaintiff-tenant therein related to "a claim or question" arising out of the terms of his tenancy. It is necessary to make it clear that an irrevocable license such as one as inferred from the terms of the tenancy which forms a part of the claim or question arising out the provisions of the Bombay Rent Act. It is on account of this reason, therefore, that the learned Civil Judge (Junior Division) continued to have jurisdiction to try and decide the suit. Though the conclusion which the learned appellate judge has recorded is founded on erroneous reasoning. I confirm it for the reasons stated in this judgment.

10. On merits Mr. Majmudar has argued that the learned appellate Judge could not have made out in favour of the plaintiff-tenant a case for an irrevocable license because it was neither pleaded by the plaintiff-tenant nor was it proved by him. The argument which Mr. Majmudar has raised is not well-founded. Where an irrevocable license is to be inferred from the terms of the tenancy, it is not necessary to plead and prove it. What a tenant is required to plead and prove is the tenancy created in his favour and the terms governing them. Once he proves that he is the tenant of the defendant and the terms on which he holds the tenancy, an irrevocable license such as one as in this case can be easily proved by him. Therefore, the proof of an irrevocable license depends upon the proof of the tenancy and its terms. They are not separable. They constitute one and single transaction. All that the plaintiff-tenant in the instant case pleaded was that he had a right to use the latrine. He founded his claim upon the fact that he

has been the tenant of the defendant-landlord in respect of the suit premises to which, as to the rest of the building, the latrine in question is attached. Therefore, when the learned trial Judge drew an inference of an irrevocable license from the fact of the tenancy established by the plaintiff tenant and the terms of the tenancy proved by him, he did not make out any new case in favour of the plaintiff-tenant. There are two positions, which can be conceived in this behalf. Landlord might have in express terms let out the latrine for the use of the tenant or he might not have done it. If it is proved that it was expressly let out to the tenant, nothing more is required to be done. The plaintiff's claim such as one as in the present case must be decreed. But if the plaintiff has not proved an express term of tenancy under- which he has right to use the latrine it is open to the Court to find out whether from the transaction of tenancy and its terms he has proved something less. If it is held that he has proved something less, the lesser relief must be granted to him. It cannot be denied on the ground of want of pleadings and proof. The argument which Mr. Majmudar has raised would have required serious consideration if besides the tenancy and its terms the plaintiff-tenant was required to prove something else for making good his case. In the instant case there was nothing else which he was required to prove. Therefore, what the learned appellate Judge has done is to grant lesser relief and not make out a new case for the plaintiff-tenant. The contention raised by Mr. Majmudar in that behalf, therefore, is rejected.

11. The last contention which Mr. Majmudar has raised relates to Section 60 of the Easements Act. The argument which he has raised is that it has not been proved, in order to make good the claim of an irrevocable license, that there was "transfer of property" in favour of the plaintiff tenant. Section 60 inter alia provides as follows:-

"A license may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force"

Clause (b) of Section 60 is, not material for the purpose of this case. There is no doubt or dispute about the fact that the tenancy created by the defendant landlord in favour of the plaintiff-tenant is in force. The creation of a tenancy in respect of an Immovable property always means transfer of interest in Immovable property to the tenant. Tenancy - rights themselves constitute Immovable property. Therefore when the defendant-landlord let out the premises in question to the plaintiff-tenant, there was transfer of interest in the Immovable property by the defendant-landlord to the plaintiff-tenant. There is no doubt or dispute about the fact that tenancy is in force. Obviously, therefore, the transfer is in force. In my opinion, terms of Clause (a) of Section 60 of the Easements Act were fully satisfied in, the instant case. Section 61 to which Mr. Majmudar has referred does not have application to the facts of the instant case because it provides for revocation, express or implied.

12. Since I find no substance in any of the contentions raised by Mr. Majmudar,

the revision application fails and to dismissed. Rule is discharged with no order as to costs.

13. Revision dismissed.