

(1983) 12 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 2068 of 1981

Mahendralal Mohanlal Sharma

APPELLANT

Vs

Ajit Singh Harinamsingh and others

RESPONDENT

Date of Decision : 08-12-1983

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1984) MhLj 402

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : S.N. Bagve, for the Appellant; S.M. Dhanuka and S.S. Badve, for the Respondent

Final Decision : Allowed

Judgement

D.B. Deshpande, J.—This is tenant's petition under Article 227 of the Constitution of India challenging the order of the Additional Rent Controller, Aurangabad directing his eviction and also challenging the order of confirmation of the aforesaid order by the District Judge, Aurangabad and it arises out of the following facts.

The present respondent No. 1 Ajit Singh filed eviction petition before the Additional Rent Controller, Aurangabad against the present petitioner who is admittedly the tenant of house No. 823 situated in the Cantonment area at Aurangabad. In his petition Ajit Singh averred that he is the landlord. He alleged further that the petitioner-tenant was not paying rent each month regularly and was in arrears of rent for a period from 1-2-1974 to 30-9-1975 and as such was a wilful defaulter. He also alleged that the tenant did not pay monthly and regularly and in spite of a notice also he did not pay rent. He alleged further that he needs the suit premises for his personal bona fide use. He, therefore, sent an ejectment notice to the tenant and filed this petition.

2. The tenant resisted this petition. He denied that Ajit Singh is the owner of the

suit house. He contended that the suit house is in the name of Sardarsingh brother of Ajit Singh in the assessment register of the Cantonment Office. He, therefore, contended that Ajit Singh has no cause of action to file this petition. He denied that he was a wilful defaulter. He contended that rent that was due was only Rs. 900 and he has deposited this amount in the Court on 24-9-1975. He denied also that Ajit Singh wanted the suit premises for his personal bona fides occupation. He contended also that after the notice terminating the tenancy, plaintiff accepted rent from July 1975 onwards and, therefore, the notice became ineffective.

3. The issues were framed as follows:?

1. Whether the plaintiff proved that defendant is a wilful Defaulter? Yes.
2. Whether the plaintiff proves that the plaintiff required the suit house for his bona fide personal requirement? No.
3. Whether the notice of termination of tenancy has been validly served by the plaintiff on the defendant? Yes.
4. Does the defendant prove that the plaintiff is not the owner (landlord) of the suit house? No.
5. Does the defendant prove that he has made payment to date? No.
6. Whether the defendant proves that he is employed in the essential service? No.
7. Does the defendant prove that the hardship caused to him if required to vacate the suit house will outweigh the advantage to the plaintiff if the application is granted? No.
8. What order.

Additional issue on the application dated 8-6-1977 by the defendant:

Is the application by the plaintiff Ajit singh maintainable without the previous written consent of the landlord u/s 15 (8) of the Act? F. Application rejected.

After considering the evidence on record the learned Additional Rent Controller held that the plaintiff proved that the defendant was a wilful defaulter. He rejected the plaintiff's claim that the plaintiff requires the suit house for his bona fide personal requirement. He held that the tenancy was validly terminated. He rejected the defendant's contention that plaintiff is not the owner of the suit house. It appears that the defendant had also raised a contention that he was in essential services and so he could not be evicted but this contention was rejected by the trial Court. He held that the defendant failed to prove comparative greater hardships and so he passed an order of eviction within 30 days from the date of the order.

4. The tenant carried an appeal to the District Court at Aurangabad and it was heard by the learned District Judge. The learned District Judge held that Ajit

Singh was competent to file this eviction petition. He held that the tenant was a wilful defaulter. He also rejected the contention of the tenant that he could not be evicted because he belonged to essential services. It appears that the question of bona fide requirement was not pressed before the learned District Judge. Consequently, the learned District Judge dismissed the appeal but granted one month's time to vacate the house. This has given rise to this petition.

5. Shri S.N. Bagve appearing for the petitioner raised only two questions before me namely (1) Ajit Singh was not entitled to file eviction petition and (2) Petitioner-tenant was not a wilful defaulter.

6. It may be pointed out that in the petition filed by Ajit Singh he has merely stated that he is the landlord and in the written statement the tenant has denied that the plaintiff is the owner of the suit house and that he is entitled to file this eviction petition against him. Now the main grievance of Shri Bagve is that the Courts below have not taken into consideration certain positions admitted by the parties in the trial Court. Now it does not appear from the petition filed by Ajit Singh that he asserted any title to the suit house. It does not appear from the petition that he has any interest also in the title to the suit house. When the tenant was in the witness-box the only question put to him was, Ajit Singh might have been allowed to look after this house and the tenant answered in the affirmative. It is never suggested to the tenant that Ajit Singh has any ownership interest in this suit house. In this context Shri Bagve relied upon section 15 (8) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (hereinafter referred to as the Rent Act). This sub-section runs as follows:?

15(8): Notwithstanding anything contained in this section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the Landlord, be entitled to apply for the eviction of a tenant.

As against this, Shri S.S. Bagve appearing for respondent No. 1 placed reliance upon the definition of word "Landlord" in section 2 (c) of the Rent Act. It runs as follows:?

2(c): "Landlord" includes a person who is receiving or is entitled to receive rent of a house, whether on his own account or on behalf of or for the benefit of another person or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive rent or be entitled to receive rent if the house were let to a tenant;

Now it is true that the definition of the word "Landlord" clearly shows that a person who is receiving rent or who is entitled to receive rent is included in the definition of the word "Landlord". Now in the instant case it is not disputed that agent was either recovering rent on behalf of his brother or was entitled to recover rent on behalf of his brother. On the latter aspect I am rather doubtful in view of admission by Ajit Singh. I shall turn to this later on. I shall assume for a moment that Ajit Singh was receiving rent on behalf of his brother Sardarsingh.

This can be further apparent from the fact that earlier Ajit Singh had tiled a suit for recovery of rent against the present petitioner-tenant and that suit ended in a decree. Hence I am prepared to hold that Ajit Singh was receiving rent on behalf of his brother Sardarsingh. Shri Bagve also does not dispute this position but according to him, in view of the provisions of sub-section (8) of section 15 of the Rent Act, Ajit Singh is not entitled to file this eviction petition in the absence of an authority from Sardarsingh. Now it appears from the evidence that Sardarsingh is the owner of this house. It is, therefore, clear that the position of Ajit Singh is no better than that of an agent of Sardarsingh recovering rent from the tenant-petitioner and in this context we have to turn to the admissions given by Ajit Singh in his cross-examination. Ajit Singh admitted that Sardarsingh has not given any authority to collect rent. He admitted further that Sardarsingh has not given any authority to file the eviction suit against the defendant. Now these admissions go a long way against this Ajit Singh in the matter of filing this eviction petition and the provisions of section 15 (8) are mandatory. They clearly say that unless there is a written consent of the landlord no action for eviction can be filed by the person who is receiving rent merely as an agent of the landlord. I have presently pointed out that the position of Ajit Singh was no better than that of an agent of Sardarsingh, the real landlord and hence except with the previous written consent of Sardarsingh, Ajit Singh could not file this eviction petition. The learned District Judge has observed that in view of the earlier money decree for rent in a suit this contention is barred by the principle of res judicata. I am unable to agree with him. Section 2 (c) of the Rent Act clearly enables any person to receive rent from the tenant and the person receiving rent from the tenant has obtained a decree for arrears of rent in that capacity. That decision cannot operate as res judicata in view of the specific provisions made in sub-section 8 of section 15 of the Rent Act. I am, therefore, satisfied that Ajit Singh has no right to file this eviction petition and as such both the Courts below have committed a clear error of law in passing the order of eviction.

7. The next question is, whether the petitioner tenant is a wilful defaulter? Shri Bagve tried to convince me that there is no averment in the petition that the petitioner-tenant is a wilful defaulter. I am unable to agree with him. Even a mere reading of the petition clearly goes to show that Ajit Singh has averred in the petition that the tenant was a wilful defaulter. It appears that it was the contention of Shri Bagve that in the prayer clause it is necessary to mention that Ajit Singh was entitled to possession because the tenant was a wilful defaulter. It is a sound rule of law that plaint must be read as a whole and reading the plaint as a whole I am satisfied that Ajit Singh claimed possession from the tenant petitioner on the ground of wilful default in the payment of rent. There cannot be any other conclusion in this respect and hence I do not find any force in this contention raised by Shri Bagve.

8. Any way consistent with my findings on the competency of Ajit Singh to file this petition, this petition filed by Ajit Singh will have to be dismissed.

9. Writ petition is, therefore, allowed. The order of eviction passed by the Additional Rent Controller and confirmed by the District Judge is hereby quashed and the petition for eviction filed by Ajit Singh is dismissed. Rule is made absolute. In view of the peculiar circumstances of this case there will be no order as to costs throughout.