

(1976) 04 GUJ CK 0016

In the Gujarat High Court

Case No : Civil Revision Application No. 620 of 1973

Nanduben Dayalji

APPELLANT

Vs

Bhatia Ranchhoddas Lalji and Another

RESPONDENT

Date of Decision : 08-04-1976

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(1), 13

Evidence Act, 1872 — Section 116

Transfer of Property Act, 1882 — Section 111

Citation : AIR 1977 Guj 173 : (1977) 18 GLR 140

Hon'ble Judges : S.H. Sheth, J;C.V. Rane, J

Bench : Division Bench

Advocate : Suresh M. Shah, for the Appellant; C.K. Takwani, for the Respondent

Judgement

S.H. Sheth, J.—The plaintiffs filed the present suit against the defendant for recovery of possession of the suit premises on the ground that the plaintiffs required them reasonably arid bonafide for their personal occupation and that the defendant had denied the plaintiffs" title. The suit premises are situate at Porbandar.

2. The defendant denied the plaintiffs" claim.

3. The learned Trial Judge negatived the plaintiffs allegation as to their reasonable and bona fide requirement of the suit premises but held that since the defendant had denied the plaintiffs, title, she had forfeited the lease. In that view of the matter the learned Trial Judge passed in favour of the plaintiffs decree for possession.

4. The defendant appealed against that decree to the District Court. The learned Appellate Judge confirmed both the findings and dismissed the appeal.

5. It is that appellate decree which is challenged by the defendant in this Civil Revision Application.

6. Mr. Shah who appears for the defendant has raised before us the following two contentions:

(1) In the facts and circumstances of the case the defendant "had not denied the plaintiff's title.

(2) Even if the defendant had done so, no decree for possession can be passed against her because denial or disclaimer of the plaintiffs' title is not a ground of eviction under the Bombay Rent Act.

7. So far as the first contention is concerned, is necessary to have a look at three documents to which our attention has been invited. On 3rd August 1971 the plaintiffs sent to the defendant a registered notice in which they inter alia stated as follows:

"In Bhatia Bazar of Porbandar city house bearing Ward No. 2-2-4 belonging to their late ancestor Jivan Jetha has been situate and we are his heirs at law. Out of the said house one room on the ground floor, two rooms on the first floor and one room on the second floor have been let out to you at a monthly rent of Rs. 6-25 and that you are the monthly tenant in respect of the said premises." In reply to this notice the defendant sent to the plaintiffs reply dated 17th August 1971 in which the defendant made two statements. The first statement which she made was that she had been in adverse possession of the suit premises. The second statement which she made was that the plaintiffs were not the only heirs of Jivan Jetba. Mr. Shah has contended before us that these two statements made by the defendant do not amount to disclaimer or denial of the plaintiffs' title by the defendant. If a tenant challenges the title of the heir of his landlord after the latter's expiry on the ground that he is not the heir of the landlord who inducted him into possession, it does not amount, in our opinion, to disclaimer or denial of title because if a tenant believes that one who calls upon him to vacate the premises or to pay rent is not the heir of the person from whom he obtained the premises on rent, he is certainly entitled, without incurring any legal consequences in that behalf, to call upon such a person to prove his title on devolution. However, in the instant case, that is not the situation. The rent-note, Ex. 16, shows that the defendant executed it on 12th January 1969 not in favour of Jivan Jetha whose heirs the plaintiffs claim to be but in favour of the plaintiffs themselves who have been merely described therein as the heirs of Jivan Jetha. In whatever manner the plaintiffs might have described themselves in the rent-note the fact remains that the plaintiffs themselves had inducted the defendant in the suit premises and had established the contractual relationship of lessor and lessee between the parties. Therefore, when the defendant stated in her reply, Ex. 21, that the plaintiffs were not the only heirs of Jivan Jetha and that she had been in adverse possession of the suit premises, she in terms and expressly not only disclaimed or denied the title of the plaintiffs who had inducted her into the suit premises but set up the title in herself. In our opinion, therefore, the contention which Mr. Shah has raised that in the facts and circumstances of the case there was no denial by the defendant of the Plaintiffs,

title is incorrect. The defendant had in terms expressly denied the plaintiffs' title.

8. It may be noted that on 13th October 1971 the plaintiffs through their advocate sent another notice to the defendant in which they stated that the defendant had rendered herself liable to be evicted from the suit premises because she had claimed adverse Possession and set up the title to the suit premises in herself. The first contention which Mr. Shah has raised is, therefore, without any substance and is rejected.

9. That takes us to the second contention which Mr. Shah has raised. The question which we are called upon to answer is whether the defendant can be evicted from the suit premises under the scheme of the Bombay Rent Act on the ground that she had disclaimed or denied the plaintiffs' title. Now, so far as the Transfer of Property Act is concerned, Clause (g) of S. 111 inter alia clearly provides that a lease of immovable property determines in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in, himself. However, no resort can be had to that clause proprio vigore because the Rent Act which protects the tenants super-imposes itself upon the provisions of the Transfer of Property Act and unless the plaintiffs' case for eviction of the defendant falls within the four walls of the Bombay Rent Act, she cannot be evicted. Sub-s. (1) of S. 12 of the Bombay Rent Act provides as follows:

"A landlord shall not be entitled to the recovery of Possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

Sub-s. (1) of S. 13 opens with the following words:

"Notwithstanding anything contained in this Act but subject to the provisions of S. 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied

Now, so far as S. 13 is concerned, disclaimer or denial of the plaintiffs' title by the defendant is no ground for evicting the defendant from the suit premises. Reading Ss. 12 and 13 together it is clear that the eviction of a tenant from the premises occupied by him is barred by sub-s. (1) of S. 12 as long as the tenant is ready and willing to pay the amount of the standard rent and permitted increases or pays them and performs "the other conditions of the tenancy" in so far as they are consistent with the provisions of the Bombay Rent Act. It is clear, therefore, that as long as a tenant pays or is ready and willing to pay the standard rent and permitted increases and observes and performs "the other conditions of the tenancy" which are consistent with the provisions of the Bombay Rent Act, he cannot be evicted from premises irrespective of what the Transfer of Property Act provides. S. 13 a part of which we have reproduced above carves out an exception to sub-s. (1) of S. 12 inasmuch as it opens with

the words "Notwithstanding anything contained in this Act but subject to the provisions of S. 15". Therefore, in the instant case, if the provisions of S. 12 are violated, the defendant can be evicted from the premises in his possession. However, even though he may be satisfying the provisions of S. 12 and is entitled to claim protection thereunder, he can be evicted if he is guilty of any of the things specified in Cls. (A) to (L) of sub-s. (1) of S. 13. The question which Mr. Takwani has argued before us is that the defendant is not entitled to the - protection of sub-s. (1) of S. 12 because by denying the plaintiffs' title to the suit premises and setting it up in herself she has not observed and performed "the other conditions of the tenancy." He has argued that acceptance of the relationship of landlord and tenant between the parties is the first and fundamental condition of tenancy between the parties irrespective of whether it has been expressly incorporated in the rent note or not. We are impressed by the argument which he has raised before us. It is that very relationship between the parties which qualifies a tenant for protection under the Rent Act. Any rights which a tenant may claim flow from his basic acceptance of the relationship of landlord and tenant between the parties. Acceptance of this relationship implicit between a landlord and a tenant even though the rent-note or lease may not be providing that in case a tenant disclaims or denies his landlord's title, he shall be liable to be evicted. Such a condition, written or unwritten, can never be inconsistent with any of the provisions of this Act because it is his acceptance of this relationship which brings the provisions of the Rent Act into picture and, as stated above, qualifies him for protection under that Act to the exclusion of the provisions of S. 111 of the Transfer of Property Act under which he would be liable to be evicted on account of such a reason. This condition, whether express or implied, is protected by S. 116 of the Evidence Act which estops a lessee from denying his lessor's title. Therefore, it is not a mere contractual term or condition of tenancy but it is a condition which is protected by the statute. We are, therefore, of the opinion that the acceptance of this relationship is quite consistent with the provisions of the Bombay Rent Act and it is accepted by every tenant in order to qualify himself for the protection of the Bombay Rent Act. As soon as a tenant denies the title" of his landlord who demised the premises to him and with whom he has a privity of contract and sets it up in himself or in someone else it must be unhesitatingly said that he has not observed. and performed the most basic and fundamental condition of the tenancy. In our opinion, the expression "the other conditions of the tenancy" used in sub-s. (1) of S. 12 means the conditions of tenancy other than one relating to payment of rent which has been expressly specified in sub-s. (1) of S. 12. When such a condition is pressed into service by a landlord to evict his tenant from the premises in his possession, it can be given effect to and decree for possession can be passed against him if it is consistent with the provisions of the Bombay Rent Act.

10. Mr. Shah has argued that the expression "other conditions" used in sub-s. (1) of S. 12 means express conditions incorporated in a lease or rent note and not

any other conditions. That, in our opinion, is an incorrect argument because it is not necessary that every lease must be in writing and/or registered. Therefore, to construe "other conditions" used in sub-s. (1) of S. 12 as those which have been expressly incorporated in a lease or rent-note is to unduly narrow down the connotation of that expression and to take such a view would hit at the very substratum of the relationship of a landlord and a tenant between the parties on account of which the tenant qualifies himself for protection.

11. * * * * *

12. The last argument which Mr. Shah has raised is that once the tenant denies his landlord's title, the only remedy which the landlord has is to file a suit on title and that he cannot have any resort to the Rent Act. That argument, in our opinion is thoroughly misconceived. Irrespective of what the defendant states or does, if a landlord is able to prove that he is the landlord and that there exists between the parties the relationship of a landlord and a tenant, he is entitled to maintain a suit under the provisions of the Rent Act to recover possession of the premises from his tenant.

13. Lastly, Mr. Shah has pressed into service the decision of Mr. Justice Dave in *Nanavati Jayantilal v. Shah Ashabhai* (1974) 15 Gui LR 675. A similar question arose in that case, The tenant had denied his landlord's title and the landlord sought to recover possession of the suit premises on that ground. Dealing with S. 12 of the Bombay Rent Act this is what the learned Judge has observed in his judgment

"Assuming that the rent note marked 3/6 is taken into consideration as duly proved, that rent note does not contain any condition which would entitle the plaintiff to obtain possession from the defendant -on the ground of disclaimer of title. Normally, the words other conditions of the tenancy" would include terms and conditions arising under the contract between the parties. In the instant case the defendant was a statutory tenant as stated by the plaintiff himself. No doubt, even after the expiry of the period of lease, if the defendant continues to stay in the premises, he may become a tenant by holding over as provided in S. 116 of the Transfer of Property Act or he may become a statutory tenant by virtue of existence of the Rent Control Act. In both the cases, if originally he had entered into the premises as a tenant under some terms and conditions of tenancy, whether reduced to writing or orally, they would be binding on him even while he continued to reside in the suit premises as a statutory tenant. It is not the case of the plaintiff that there was any such condition in the rent note itself or orally agreed between the parties that If the defendant denied the title of the landlord, it would be open to the landlord to terminate his tenancy and obtain a decree against him. No doubt, under the provisions of the T. P. Act, the landlord shall be entitled to terminate the tenancy if the tenant disclaimed his title in the suit premises. S. 111 of the Transfer of Property Act enumerates several modes for terminating the tenancy. But all the modes mentioned in S. 111 of the Transfer of Property Act do not entitle the landlord to obtain a decree under the Rent Control

Act, and the provisions of the T. P. Act could not be imported into the Rent Control Act unless by implication or specific provision of the Act itself, such import could be inferred. S. 108 of the T. P. Act enumerates rights and liabilities of the lessor -and lessee. This section does not include any clause entitling the lessor to claim possession on the ground of lessee disclaiming like title.

Thereafter, the learned Judge has reproduced Clause (g) of S. 111 of the T. P. Act and further observed as follows:

"It will be seen that under sub-clause (g), the landlord would be entitled to terminate the tenancy if the lessee committed a breach of express condition or he renounced his character by setting up a title in a third person or by claiming title in himself or the lessee is adjudicated an insolvent. Now, so far as third clause is concerned, even if the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter the premises on the happening of such event ;hat would not entitle the lessor to come before the Court under the Rent Control Act claiming possession. In order to claim possession under the Act, the case of the landlord should fall either under S. 12(1) or S. 13(1) of the Act. If there is a breach of conditions of tenancy, the tenant no doubt would lose the protection of the Act as stated in S. 12(1). In that case, it would be open to the landlord to determine the tenancy by giving a notice and then obtain a decree for eviction against him. But all those grounds, which would entitle a lessor to re-enter as provided in the Transfer of Property Act would not be sufficient ground per se to obtain a decree for eviction under the Act.

Mr. Majmudar was conscious of the limitations of S. 12(1) of the Act. That is why, he wanted to interpret the words "performs other conditions of the tenancy" by saying that other conditions need not be express but they may be implied also. He submitted that if under the general law viz., the Transfer of Property Act, the lessor was entitled to re-enter if the tenant renounces his title, it could be said that it was an implied condition of the tenancy. He urged that unless the tenant accepted the lessor as the owner of the property, there could not be any relationship of a landlord and tenant between them. Therefore the condition of acceptance by the tenant of his lessor as the owner of the Property is a pre-requisite condition of tenancy by implication. If he commits a breach of such material condition, the tenant would lose the protection under the Act and it would be open to the lessor to file a suit for eviction. I am unable to agree with the submissions made by Mr. Majmudar for the simple reason that if the tenant renounces the title of his landlord, there would not remain any relationship of the landlord and tenant between them in that case, the Court under the Rent Control Act would have no jurisdiction to deal with the matter. In such an eventuality, the landlord would be required to go to an ordinary civil court to file the suit against the tenant on the strength of his title. He cannot ask the court under the Rent Control Act to give a relief for possession on the ground of disclaimer of title. The very fact that as long as the tenant performed other conditions of tenancy, he would be entitled to protection of the Act goes to indicate that there must exist a

tenancy between" the parties before the Court under the Rent Control Act could have jurisdiction over them. The moment a tenant disclaims the title of the landlord and sets up a title in a third person or himself, there would not be a relationship of landlord and tenant between them and in my opinion, the court under the Rent Control Act in that case would have no jurisdiction to decide such a case."

The reasoning which has weighed with the learned Judge is, with great respect, fallacious. The basic reason which has prevailed with him is that unless there is an express condition in the rent note that a landlord would be entitled to recover possession of the suit premises from his tenant if the latter denied or disclaimed his title, then alone the case would fall under sub-s. (1) of S. 12 of the Bombay Rent Act. That, in our opinion, is not a correct approach firstly because it is the existence of this very relationship between the parties which qualifies a tenant for -protection under the Bombay -----Act and secondly because in every case between landlord and tenant there is always an acceptance of the basic fact that one is a landlord and the other is a tenant irrespective of whether, where there is a written rent-note, such an express condition has been incorporated or not. Whether the transaction is oral or written, the continued acceptance of the relationship of landlord and tenant between the parties is the most pre-eminent pre-condition for the tenant to continue in possession of the premises demised to him. The connotation which the learned Judge has imported to the expression "other conditions of the tenancy" is too narrow and neglects the basic fact governing the relationship between the parties. What we have quoted above from the judgment of the learned Judge clearly shows that the arguments which Mr. Majmudar raised, before him were completely justified and they could not have been repelled on any ground. In our opinion, with great respect, the learned Judge was in error in saying that as soon as a tenant denies the title of his landlord who has inducted him in possession of the premises, the only remedy which the landlord has is to file a suit on title or to seek relief for possession elsewhere on the ground of disclaimer of title. This reasoning also suffers from a basic fallacy. If there is a disclaimer of title and if it is no ground for eviction under the Bombay Rent Act then the veil of protection which the Bombay Rent Act throws round the tenant will help him to overreach his landlord. It would mean that it is open to a tenant to go on denying his landlord's title with impunity and to continue in possession of the demised premises until his landlord establishes his title. That, in our opinion, is not the scheme -of Bombay Rent Act. Any protection he can claim the Bombay Rent flows from the basic fact that lie accept the relationship of landlord and tenant between the parties. The moment he disputes that relationship, he must be held to have committed breach of the most essential condition of tenancy which qualifies him for protection under subs. (1) of S. 12. We are, therefore, of the opinion that the principle laid down by the learned Judge in the decision referred to above is not the correct principle. We are unable to agree with it. In our opinion, therefore, the defendant in the instant case by denying the title of the plaintiffs who inducted her in the suit premises

and by setting up self has forfeited the protection which sub-s. (1) of S. 12 accords to her. Therefore, in our opinion, she was not willing to observe and perform the very first condition of the rent-note and therefore she was not entitled to the protection under the Bombay Rent Act. In that view of the matter she is liable to be evicted and the decree passed by the Courts below is quite justified. We, therefore, see no reason to interfere with the impugned decree.

14. The Revision Application, therefore, fails and the dismissed Rule is discharged with costs.

15. Revision dismissed