
(1993) 06 GUJ CK 0055
In the Gujarat High Court

Nanubhai Paragji

APPELLANT

Vs

Chhaganlal Ranchhodji Desai and Others

RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28, 28
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1993) 2 GLR 1613

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The judgment and the decree passed by the learned Civil Judge (S.D.) at Valsad on 31st July, 1978 in Special Civil Suit No. III of 1978 are under challenge in this First Appeal preferred by the original plaintiff u/s 96 of the Code of Civil Procedure, 1908 ("the Code" for brief). It is needless to say that the suit came to be dismissed by the Court below.

2. The facts giving rise to this Appeal are not many and not much in dispute. The appellant claimed to be the tenant of the premises comprising of the first "Gala" from the western side of the house known as "Ratan Bhavan" bearing City Survey No. 4871-B and situated at Tithal Road, Valsad ("the Suit Premises" for convenience). According to him, defendant No. 2 was his nephew, and was residing with the former from his age of 3 years. It is the case of the appellant herein that in or around 1956 he was transferred from Valsad to Malegaon and thereafter his brothers and other members of his family were residing in the suit premises and defendant No. 2 also resided therein as his dependant. It may be mentioned at this stage that the appellant herein claims to have taken the suit premises on lease in his name for his joint family. It appears that respondent No. 1 herein was serving in Bombay and he came down to Valsad after release from his service and resided with his son, that is, respondent No. 2 herein. The case of the appellant herein is that respondent No. 1 herein was permitted to reside in the suit premises by and at the instance of the present appellant. It appears that respondent No. 2 claimed tenancy rights in respect of the suit premises on the

basis that it was sublet or assigned to him by the appellant herein. The appellant herein thereupon filed a suit in the Court of the Civil Judge (J.D.) at Valsad for a declaration that he was the tenant in respect of the suit premises and respondents Nos. 1 and 2 herein were not tenants thereof and prayed for a decree for possession thereof. It came to be registered as Regular Civil Suit No. 82 of 1968. Respondents Nos. 3 to 6 herein were joined in the suit as party-defendants as the heirs and legal representatives of the original landlord from whom the appellant herein claims to have taken the suit premises on lease. Respondents Nos. 1 and 2 as defendants Nos. 1 and 2 filed their written statement at Exh. 26 on the record of the trial Court and resisted the present appellant's suit on various grounds. They inter alia contended that the suit premises was sublet or assigned to respondent No. 2 by the appellant herein on the letter's transfer from Valsad to Malegaon sometime in or around 1956. They therefore, prayed for dismissal of the suit. Respondents Nos. 3 and 5 filed their written statement at Exh. 27 On the record of the trial Court and contended that the suit raised controversies between the appellant and respondents Nos. 1 and 2 herein with which respondents Nos. 3 and 5 had no concern. Respondents Nos. 3 and 5 have averred in their written statement at Exh. 27 on the record of the trial Court that the rent in respect of the suit premises was continued to be paid by respondent No. 2 herein from 12 years before the date of the written statement. Respondents Nos. 4 and 6 remained ex-parte. It appears that on the aforesaid pleadings of the parties the learned trial Judge framed the necessary issues. The learned trial Judge also recorded evidence of the parties. At the time of hearing, the learned trial Judge however thought that he did not have any pecuniary jurisdiction to try the matter in view of the valuation of the suit claim determined by him. The learned trial Judge thereupon ordered return of the plaint to the appellant herein for its presentation to the proper Court after revising the valuation of the suit claim with a direction to pay the deceit Court-fees in view of the revised valuation of the suit claim. That order of the learned trial Judge came to be affirmed both in appeal before the District Court and in revision before This Court being Civil Revision Application No. 1497 of 1972 decided on 30th March, 1977. Thereupon the plaint was returned to the plaintiff for its presentation to the proper Court. It appears to have been presented to the Court of the Civil Judge (S.D.) at Navsari. On establishment of the Court of the Civil Judge (SD.) at Valsad it came to be transferred thereto and it came to be registered as Special Civil Suit No. III of 1978. It appears that the parties agreed to rely on the evidence led by them in trial in Regular Civil Suit No. 82 of 1968 without leading any fresh or further evidence in the matter. They did not seek any amendment in the issues framed in Regular Civil Suit No. 82 of 1968. After hearing the parties, by his judgment and decree passed on 31st July, 1978 in Special Civil Suit No. III of 1978, the learned Civil Judge (S.D.) at Valsad dismissed the suit. That aggrieved the present appellant and he has therefore invoked the appellate jurisdiction of This Court by means of this First Appeal.

3. Shri D.D. Vyas appearing for the main contesting respondent, that is,

respondent No. 2 herein has submitted that the Court below had no jurisdiction to try the suit in view of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Act" for brief). In that view of the matter, runs his further submission, the First Appeal before This Court would not be competent. As against this, Shri Oza for the appellant has submitted that respondent No. 2 cannot be permitted to canvass this point before This Court as such plea was neither taken in his pleading nor canvassed before the lower Court at the time of hearing. Besides, runs the submission of Shri Oza for the appellant herein, the suit filed before the lower Court was for a declaration with a consequential relief for possession and the claim made in the suit was de hors the Act, and as such Section 28 thereof will not be applicable in the instant case.

4. It is not in dispute that the point of jurisdiction of the Court on the basis of Section 28 of the Act was not raised before the lower Court by or on behalf the contesting parties either in pleadings or in arguments at the time of hearing. If the question pertains to the inherent lack of jurisdiction of the Court, such a point can be permitted to be raised at any stage of the proceedings even if it is not taken before the Court or Courts below in view of the ruling of the Supreme Court in the case of Chandrika Misir and Another Vs. Bhaiya Lal, .

5. It cannot be gainsaid that Section 28 of the Act bars the jurisdiction of an ordinary Civil Court to try the suit falling within its purview. Since Section 28 of the Act is pressed into service by the learned Advocate for respondent No. 2 herein, I have permitted him to raise this point though it was not taken before the lower Court.

In order to decide whether or not Section 28 of the Act applies to the instant case, the relevant averments in the plaint will have to be looked into in view of the ruling of the Supreme Court in the case of Raizada Topandas and Another Vs. Gorakhram Gokalchand, .

6. The material averments made in the plaint are already referred to in the earlier part of this judgment while summarising the facts giving rise to this appeal. Even at the cost of repetition, it may be stated that the appellant herein has claimed tenancy rights with respect to the suit premises. He has also claimed that neither defendant No. 1 nor defendant No. 2 is a tenant of the suit premises. According to the appellant, respondent No. 2 herein was residing in the suit premises from his age of 3 years as a dependant of the appellant herein. The appellant's case in the plaint is that respondent No. 2 herein did not acquire any tenancy right. Similarly it is the case of the present appellant in the plaint that respondent No. 1 herein was permitted to reside in the suit premises being a close relative of the appellant herein and father of respondent No. 2 herein. It may be mentioned that respondent No. 2 herein is a son of a sister of the appellant herein and respondent No. 1 is the husband of a sister of the appellant herein. Respondents Nos. 1 and 2 herein are father and son. According to the present appellant in his pleading, respondent No. 1 herein did not acquire any tenancy right in the suit premises. It is not in dispute that respondents Nos. 3 to

6 are the heirs and legal representatives of the original owner of the house of which the suit premises forms a part.

7. Section 28 of the Act will be attracted to a case if three conditions are satisfied. In the first place, the relationship between the parties should be that of landlord and tenant. Secondly, the claim should relate to the recovery of land or possession of the rented premises. Thirdly, the claim or the question in the proceeding is required to be dealt with or decided under the Act. It will, therefore, be necessary to see how far these three conditions are satisfied in the present case.

8. It is not in dispute that respondents Nos. 3 to 6 are the heirs and legal representatives of the deceased original owner of the house of which the suit premises is a part. They would, therefore, be the landlords for the purposes of the suit premises. The relationship between the appellant herein and respondents Nos. 3 to 6 is indisputably that of tenant and landlord. It may be mentioned at this stage that the case of the appellant herein is to the effect that neither respondent No. 1 nor respondent No. 2 is a tenant of the suit premises because respondent No. 1 herein was permitted to reside therein on his coming from Bombay to Valsad and respondent No. 2 herein was permitted to reside therein from his age of 3 years as the dependant of the appellant herein. It is the case of the appellant herein that neither respondent No. 1 nor respondent No. 2 has acquired any right whatsoever as a tenant in the suit premises. Whether or not they acquired any right as a tenant with respect to the suit premises will be a question to be answered in the light of Section 28 of the Act. It is not in dispute that the appellant herein resided in the suit premises as a tenant till 1956. At that time he was transferred to Malegaon and he went to reside thereat. It is also not in dispute that respondent No. 2 herein continued to reside in the suit premises. Respondent No. 2 has claimed tenancy rights in respect thereof on the ground that he was sublet or assigned the suit premises by the appellant herein on his transfer from Valsad to Malegaon in or around 1956. In fact, the negative declaration that neither respondent No. 1 nor respondent No. 2 herein is a tenant in respect of the suit premises is sought by the appellant in the suit on the basis that neither of the two respondents acquired any tenancy right on transfer of the appellant herein from Valsad to Malegaon in or around 1956. In other words, the declaration sought in the plaint qua respondents Nos. 1 and 2 herein is to the effect that neither of them is the sub-tenant in respect of the suit premises. Looking to the definitions of the terms "landlord" and "tenant" contained in Sections 5(3) and 5(11) respectively of the Act, the principal tenant would be the landlord qua his sub-tenant and the sub-tenant would be a tenant qua the principal tenant. In that view of the matter, there is no escape from the conclusion that the suit is also between the landlord and the tenant qua the appellant and respondents Nos. 1 and 2 herein. It is therefore clear that the first condition for application of Section 28 of the Act is found satisfied.

9. The second condition is also found satisfied as the relief sought in the suit

includes recovery of possession of the rented premises. It is immaterial I whether possession is sought by the landlord from the tenant or by the tenant from the landlord. For the purposes of the second condition for applicability of Section 28 of the Act what is necessary is recovery of possession of the rented premises. I am, therefore, of the view that the second condition for applicability of Section 28 of the Act is also found fulfilled in the present case.

10. The question as to what will be the rights, if any, of respondents Nos. 1 and 2 or either of them qua the suit premises will have to be decided on the basis of Section 15 of the Act. It cannot be gainsaid that the appellant herein has sought a negative declaration that neither respondent No. 1 nor respondent No. 2 has acquired any tenancy right whatsoever with respect to the suit premises. Even at the cost of repetition, it may be reiterated that the appellant herein has averred in the plaint that respondent No. 2 was permitted to reside in the suit premises from his age of 3 years as a dependant of the appellant herein and respondent No. 1 was permitted to reside in the suit premises as the father of respondent No. 2 and a close relative of the appellant herein, being a sister's husband. The appellant herein, therefore, asserts that in these circumstances neither respondent No. 1 nor respondent No. 2 has acquired any tenancy right qua the suit premises. As aforesaid, the appellant herein left the suit premises on his transfer from Valsad to Malegaon in or around 1956, that is, prior to coming into force of the 1959 Ordinance referred to in Section 15(2) of the Act. It may again be reiterated that, on the transfer of the appellant herein from Valsad to Malegaon in or around 1956, respondent No. 2 continued to reside in the suit premises. Later on he was joined by his father, that is, respondent No. 1 herein. The question of acquisition of tenancy rights, if any, by either respondent No. 1 or respondent No. 2, more particularly by respondent No. 2, will have to be answered keeping in mind the provisions of Section 15 of the Act. That question can certainly and definitely be said to be a question arising under the Act. That question is certainly and definitely not de hors the Act. In that view of the matter, the third condition for applicability of Section 28 of the Act is also found fulfilled and satisfied in the instant case.

11. In view of my aforesaid discussion, I am of the view that the suit as framed would fall within the purview of Section 28 of the Act and it will be entertainable and triable only by the Forum named in it. The suit in the present case was admittedly and obviously tried by the ordinary Civil Court and not by what is popularly termed as the Rent Court specified in Section 28 of the Act. The trial of the suit by the lower Court as an ordinary Civil Court would therefore be without jurisdiction.

12. I am fortified in my view by the ruling of the Supreme Court in the case of Babulal Bhuramal and Another Vs. Nandram Shivram and Others, . In that case a landlord after giving a notice to quit to his tenant on 6th December, 1947 filed a suit against him in the Court of Small Causes at Bombay impleading two other persons who were alleged to be sub-tenants of the tenant. The landlord's case

was that the tenancy of his tenant was validly terminated and he was entitled to evict his tenant and that the alleged sub-tenants of the tenant were trespassers who had no right to be on the premises. The suit succeeded in the Small Causes Court. It was held that the sub-tenants were not lawful tenants and the subletting by the tenant to them was contrary to law. The Small Causes Court, therefore, passed a decree of eviction against the tenant and the alleged sub-tenants. Thereupon the tenant as plaintiff No. 1 and the alleged sub-tenants as plaintiffs Nos. 2 and 3 filed a suit against the landlord in the City Civil Court at Bombay for a declaration that plaintiff No. 1 was the tenant of the defendant-landlord and was entitled to protection of the Act and that plaintiff Nos. 2 and 3 were the lawful sub-tenants of plaintiff No. 1 and were entitled to possession and occupation of the premises as sub-tenants thereof. A question was raised in the City Civil Court as to whether or not it had jurisdiction to entertain the suit. The City Civil Court answered that question in the affirmative but dismissed the suit on merits. In appeal before the High Court it was held that the City Civil Court had no jurisdiction to entertain the suit and therefore the suit filed by the plaintiff in the City Civil Court was not maintainable. The matter was carried to the Supreme Court. The Supreme Court found that the suit was essentially between the landlord and the tenant, the claim was with respect to the possession of the rented premises and that the question arising therein was the one required to be dealt with and decided under the Act. This ruling of the Supreme Court in the case of Babulal Bhuramal (supra) will be applicable to the facts of the present case in view of the factual position discussed hereinabove.

13. In this connection a reference deserves to be made to the ruling of This Court in the case of Shantukumar Laxmikant v. Kumudchandra Velchandbhal reported in 1985 GLH 920. In that case the plaintiff as the owner of the premises involved in the litigation filed one suit in the City Civil Court at Ahmedabad against the defendant for eviction of the latter branding him a trespasser therein. It was averred in the plaint that the premises in question was let out to the maternal grandfather of the defendant and the tenant had died and the defendant never resided in the suit premises with his grandfather at the time of his death and he was therefore a trespasser therein. The defendant in that suit claimed to be the tenant of (he suit premises by virtue of Section 5(11)(c) of the Act, Whether or not the tenancy rights in respect of the suit premises in that case devolved on the defendant was required to be decided in the light of Section 5(11)(c) of the Act in view of the averments in the plaint itself. This Court has, therefore, held in its aforesaid ruling in the case of Shantukumar (supra) that such a question has to be dealt with and decided under the Act and the Forum named in Section 28 thereof will have the exclusive jurisdiction to decide that question.

14. By analogy, the aforesaid ruling of This Court in the case of Shantukumar (supra) would be applicable in the present case. The relevant averments in the plaint would raise a question whether or not defendants Nos. 1 and 2 have and more particularly defendant No. 2 has acquired any tenancy rights by virtue of

operation of Section 15 of the Act. In that view of the matter, the Forum named in Section 28 of the Act will have the exclusive jurisdiction to decide this question in view of the aforesaid ruling of This Courts in the case of Shantukumar (supra).

15. In view of my aforesaid discussion, I am of the opinion that the of the Civil Judge (S.D.) at Valsad had no jurisdiction to try the suit in question in view of Section 28 of the Act. It is obvious that, when the suit is filed in a Court which does not have jurisdiction to try that suit, it has to be dismissed and the plaint cannot be ordered to be returned to the plaintiff for its presentation to the Court which has jurisdiction to try the suit in view of the ruling of This Court in the cave of Shantukumar (supra). This will be applicable even if the same Court exercises both the jurisdiction of the ordinary Civil Court and also of the Rent Court. This point is also concluded by the Division Bench ruling of This Court in the case of Govindbhai Parshottamdas Patel v. New Shorrock Mills reported in .

16. In view of my holding that the trial Court had no jurisdiction to entertain or to try the suit, it is not necessary for the to examine the case on merits. I think this Govindbhai Parshottamdas Patel and Others Vs. New Shorrock Mills, Nadiad, appeal should fail only on the ground of want of inherent jurisdiction of the trial Court to entertain and to try the suit.

17. In the result, this appeal fails. It is hereby dismissed. There shall be no order as to costs on the facts and in the circumstances of the case.