
(1979) 09 BOM CK 0043
In the Bombay High Court
Case No : A.F.A.D. No. 398 of 1967

Panjabrao Harbaji Kolhe

APPELLANT

Vs

Gaianan Balaji Mane and Others

RESPONDENT

Date of Decision : 06-09-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1980 Bom 396

Hon'ble Judges : Waikar, J

Bench : Single Bench

Advocate : N.B. Mahajan, for the Appellant; B.K. De, for the Respondent

Judgement

1. This appeal is filed by the original defendant against the decree for possession passed against him in the first appeal by the learned Extra Assistant Judge, Nagpur.
2. The respondents (plaintiffs) had filed Regular Civil Suit No. 318 of 1965 for possession against the present appellant, alleging that he was let into possession as their licensee in the year 1963. It was agreed that the appellant should pay them Rs. 4/- per month and also give entire manure of the cattle. The subject matter of litigation was a small portion of a house in the field of the respondents situated at Takli within the limits of Nagpur Municipal Corporation. The respondents had served a notice dated 29-12-1964 Ex. 22 calling upon the appellant to vacate the premises which was followed by the suit.
3. The defence of the appellant was that he and one Ramchandra Gaurkar were the joint tenants of the respondents in respect of the suit premises on the monthly rent of Rs. 4/-. The subject matter was governed by the Bombay Tenancy and Agricultural Leases Act and hence the Civil Court had no jurisdiction to entertain the suit. Lastly it was contended that the notice dated 29-12-1964 was bad in law.

4. The learned trial Judge held that there was no joint tenancy as set up by this appellant. He also held that the provisions of the Bombay Tenancy and Agricultural Leases Act did not apply as the property was situated within the limits of Nagpur Municipal Corporation. Holding that the appellant was a tenant he found that the quit notice was bad and did not validly determine the tenancy and hence dismissed the suit.

5. In Civil Appeal No. 118 of 1966 preferred by the present respondents, the learned Extra Assistant Judge found that there was an unlawful tenancy in favour of the defendant as the provisions of the C. P. and Berar Letting of Houses and Rent Control Order (hereinafter called the Rent Control Order) were not duly complied with. He further held that it was not necessary for the plaintiffs to plead that the lease in favour of the defendant was invalid. He, therefore, held that the occupation of the defendant was that of a licensee and he was liable to be ejected. Disagreeing, therefore, with the finding of the trial Judge the learned Extra Assistant Judge decreed the claim of the present respondents for possession and hence this appeal.

6. Shri Mahajan, the learned counsel for the appellant, submitted that in view of the notice dated 29-12-1964 (Ex. 22) the respondents had in fact admitted that the appellant was let into possession as the tenant. It was, therefore, for the respondents to plead and prove that the provisions of the Rent Control Order were not complied with and as such the tenancy was void. He submitted that the intimation to the Rent Controller about the vacation of any premises and allotment of the same by the Collector would apply to only those premises which were constructed prior to 1-1-1951. It was, therefore, necessary for the respondents in the first instance to plead when the house was constructed, whether the intimation to the Rent Controller about the vacancy was or was not given and to show how the tenancy of the appellant was invalid. I find no merit in these submissions.

7. By the notice dated 29-12-1964 (Ex-22) the appellant was informed that since the house was in his occupation without the allotment of the Rent Controller or any information given to him, his occupation was that of a licensee. Thus by virtue of this notice the appellant was apprised of the following facts:

- (1) That the provisions of the Rent Control Order applied to this construction
- (2) That no intimation of the vacation of the premises was given to the Rent Controller.
- (3) There was, therefore, no valid creation of the tenancy in favour of the appellant.
- (4) The occupation of the appellant, therefore, was that of a licensee.

8. It was under the circumstances enough for the respondent to allege in the plaint that the occupation of the appellant was that of a licensee. In the present case the plaint has to be read in the context of the earlier notice which was given

in which it was made clear how the occupation of the appellant was that of a licensee. The pleading that the appellant was let into possession in the year 1963 as a licensee was, therefore, a complete pleading by itself. That he was not a tenant was also implied in this pleading in view of the notice served on the appellant which had preceded the suit. There was thus no surprise sprung on the appellant when it was alleged in the plaint that his occupation was only that of a licensee. If the appellant found that this pleading was either vague or unintelligible or embarrassing he should have asked for better particulars. He did not ask for better particulars presumably because he was appraised by the respondents that he could not claim to be a tenant.

9. Respondent No. 1 Gajanan (P. W. 1) deposed that this house was his ancestral house which he inherited from his father who died in the year 1932. He further stated that in the year 1963 the appellant approached him and asked for some accommodation. He was permitted to occupy the same on condition that he should pay Rs. 4/- of the repairs of the premises and he would be entitled to all the manure of the cattle which were to be tethered in that cattle-shed. He further stated that the appellant was let into possession without any intimation to the Rent Controller.

10. The learned trial Judge was, therefore, certainly in error in holding that since the occupation of the appellant was exclusive he must be held to be a tenant and his possession could not be termed as of a licensee.

11. In the result, therefore, I find that in the first place the respondents duly proved that the appellant was let into possession very recently in the year 1963 just two years before the service of the notice as a licensee under the circumstances as stated by him. Further the learned Extra Assistant Judge was justified in holding that it was for the appellant to prove that there was a valid tenancy in his favour and since the fact of valid tenancy was neither pleaded nor proved the learned trial Judge was in error in holding that there was valid lease in favour of the appellant. I see no valid reason, therefore, to interfere with the decision of the Extra Assistant Judge, Nagpur in allowing the appeal and in decreeing the claim of the respondents for possession.

12. In the result, therefore, the appeal is dismissed with costs.

13. Appeal dismissed.