

(1978) 11 GUJ CK 0023
In the Gujarat High Court

Parvatishanker Mulshanker and Another	APPELLANT
Vs	
Prafulchandra Ravjibhai Patel and Another	RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28, 28, 28(1), 28(1)

Citation : (1979) 1 GLR 762

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

Bench : Single Bench

Judgement

S.H. Sheth, J.—The plaintiff-tenant filed the present suit against the defendants (landlords) for a declaration that he has been the tenant in respect of Khadki, open chawk and loft along with the other premises admittedly let out to him. He also prayed for a permanent injunction restraining the defendants from interfering with his possession of those three premises in question. The defendants denied his claim. The learned trial Judge held that the plaintiff was not the tenant of the chawk, the khadki and the loft but had been merely using them. The learned trial Judge, therefore, did not grant the plaintiff the declaration but issued a permanent injunction restraining the defendants from interfering with the plaintiff's possession of those three premises in question because the plaintiff has all along been in possession thereof and enjoying it. The plaintiff appealed against that decree to the appellate Bench of the Court of Small Causes at Ahmedabad. The appellate Bench allowed the appeal and declared that the plaintiff has been the tenant in respect of the khadki, the open chawk and the loft and confirmed the injunction issued by the learned trial Judge. In that view of the matter, the decree passed by the learned trial Judge was modified and the plaintiff's prayers in full were granted.

2. It is that decree which is challenged by the defendant-landlords in this civil revision application.

3. The finding recorded by the appellate Bench on the contentions on merits are

all findings of fact with which this Court cannot interfere in a civil revision application. Therefore, the only serious contention which Mr. Mehta who appears on behalf of the defendants has raised is that the Court of Small Causes at Ahmedabad had no jurisdiction to entertain such a suit. It is indisputable that the Court of Small Causes will have no jurisdiction to entertain such a suit but for the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It is, therefore, necessary to turn to Section 28 in order to find out whether the Court of Small Causes at Ahmedabad had the jurisdiction to entertain the suit. It may however, be noted that this contention was not raised before any of the two Courts below. It has been raised by the defendants for the first time in this Court. However, since the contention raised by Mr. Mehta relates to the jurisdiction which, in its turn, is to be determined with reference to the provisions of Section 28 I have allowed him to raise it.

4. Sub-section (1) of Section 28 of the Rent Act, inter alia, provides as follows:

Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provisions, be within its jurisdiction, (a) in the City of Ahmedabad, the Court of Small Causes of Ahmedabad,...

shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of the Act or any of its provisions and subject to the provisions of Sub-section (2) no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question....

Sub-section (1) of Section 28 makes it clear that the Court of Small Causes at Ahmedabad has jurisdiction inter alia, to entertain and try any proceeding between a landlord and a tenant relating to the recovery of rent or possession of the premises to which part II of the said Act applies. This is not a suit for recovery of rent or possession. That sub-section further provides that the Court of Small Causes shall have jurisdiction to decide any application made under the said Act. The present suit is not an application made under the Rent Act. It next provides that the Court of Small Causes shall have jurisdiction to deal with any claim or question arising out of the Act or any of its provisions and subject to the provisions of Sub-section (2) no other Court shall have jurisdiction to entertain any such suit, proceeding or application or, to deal with such claim or question. The question which has been argued by Mr. Mehta is that the claim to declaration and permanent injunction which the plaintiff has made is not a claim arising out of the Rent Act or any of its provisions.

5. In order to make good his contention, he has invited my attention to four decisions of the High Court of Bombay. In *Shivaling Gangadhar Tambekdr v. Navnitlal Amritlal Gandhi* 60 Bom. L.R. 374, it has been laid down that when the

Civil Courts have been precluded u/s 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, from dealing with any claim or question arising out of the said Act, it means that the claim or question must arise in a suit or an application referred to in the earlier part of Section 28. In that case, the landlord filed the suit in the Civil Court complaining that his tenant had used the premises as business premises even though they were intended to be used for residential premises and that he had installed cutting and ruling machines and that the working of those machines had caused damage to the suit premises. The landlord, therefore, prayed for damages and for a mandatory injunction for the removal of those machines. The learned Chief Justice held that Section 28 of the Rent Act has no application to a suit for damages and a mandatory injunction. This decision has no applicability to the instant case. This is not a case for damages and a mandatory injunction. It is needless for me to say that Rent Act does not make any provision for recovery of any damages.

6. In *Mirabelle Hotel Co. Private Ltd. v. Manu Subedar* 72 Bom. L.R. 222, the question which arose before a Division Bench of the High Court of Bombay consisting of Mr. Justice Tarkunde and Mr. Justice Nathwani was whether the Court of Small Causes at Bombay has jurisdiction u/s 28 to entertain a suit for a permanent injunction restraining the defendant-tenant from committing breach of any of the conditions of tenancy. The Division Bench held that the Court of Small Causes had the jurisdiction to entertain the suit. This decision has also no application to the facts of the instant case because this is not a case where the landlord seeks to enforce the conditions of the tenancy.

7. Third decision to which reference has been made by Mr. Mehta is in *Bishen Baboo Vashisth v. Maharashtra Watch and Gramophone Co.* 69 Bom. L.R. 229. It has been laid down that in order to give exclusive jurisdiction to the Courts mentioned in Section 28 of the Rent Act, one of the conditions is that the suit or proceeding must relate either to the recovery of rent or to the recovery of possession of premises to which any of the provisions of Part II of the Rent Act apply. It has been further laid down in that decision that where the principal question involved in a suit filed in the City Civil Court was whether on account of some conduct on the part of the landlord the business of his tenant - the plaintiff - was materially affected and in deciding it was necessary to decide incidentally whether the plaintiff was a tenant, the City Civil Court thereby did not lose its jurisdiction to try the suit. The facts of this case do not warrant the application of the principle laid down in that case to the instant case.

8. The last decision is in *Dattatraya Krishna Sangam v. Jairam Ganesh Gore* 66 Bom. L.R. 645. In that case, a Full Bench of the High Court of Bombay has laid down that the City Civil Court at Bombay had no jurisdiction to entertain a suit for a declaration that a sub-tenancy was created in favour of the plaintiff by the defendant tenant after the coming into force of the Bombay Rent Act and for a permanent injunction restraining thin defendant from interfering with his possession as a subtenant. It has been further laid down that the City Civil Court

at Bombay has no jurisdiction to entertain a suit for a declaration that the plaintiff is the tenant or sub-tenant of the defendant and for an injunction restraining the defendant from proceeding with or from obtaining an order for eviction of the plaintiff in this application made by the defendant u/s 41 of the Presidency Small Cause Courts Act, 1882, or from executing the order for eviction obtained by him in such application. In order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. Irrespective of the form of relief claimed, if on a fair reading of the plaint it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and that relief claimed in substance relates to recovery of rent or possession or raises a claim or question arising out of the Rent Act or any of its provisions, then it is the special Court alone which will have jurisdiction to decide the suit. If a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant, the continuance of the suit in the special Court will depend on the decision of the Court on that issue. Similarly, if the plaint does not allege the relationship of landlord and tenant and no claim or question arises out of the Act or any of its provisions, then it will be the ordinary Civil Court and not the special Court which will have jurisdiction to entertain the suit. Section 28 of the Rent Act confers jurisdiction upon the special Court not only to decide questions referred to in the section but also all matters which are incidental or ancillary to the determination of these questions. It has next been laid down in that decision that the words of Section 28 are wide enough to include every suit between a landlord and a tenant whether the tenancy is contractual or is continued by reason of the provisions of the Act provided the relief asked for relates to possession. Lastly, it has been laid down in that decision that the words "relating to" used in Section 28 are very wide and include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises. Therefore, even if the suit is not for possession, if the relief claimed in the suit is in regard to or in respect of recovery of possession, it will fall within the ambit of this section. In my opinion, the principle laid down in this decision has applicability to the facts of the instant, case. The plaintiff has alleged in the plaint the relationship of landlord and tenant between him and the defendant in respect of Khadki, open chawk and the loft. He claims that he has been the tenant in respect of the said premises.

9. Mr. Mehta has argued that what the plaintiff claims is the contractual tenancy in respect of those premises and that since the contractual tenancy is a creature of the Transfer of Property Act, no provision of the Rent Act is attracted to the case. Therefore, according to him, even though the plaintiff has alleged between him and the defendant the relationship of landlord and tenant the claim which he has made does not arise out of any of the provisions of the Rent Act. I am unable to accede to the argument made by Mr. Mehta. What, in my opinion, he claims is the declaration of his tenancy as protected by the Rent Act. Once he seeks a

declaration in respect of his contractual tenancy which is protected by the Rent Act, the claim directly arises out of the provisions of the Rent Act. Therefore, it is an error to contend that what the plaintiff claims is merely a declaration of his contractual tenancy de hors or irrespective of the provisions of the Rent Act. In my opinion, therefore, the Court of Small Causes at Ahmedabad had the jurisdiction to entertain the present suit.

10. The expression "any claim...arising out of the Act or any of its provisions" used in Sub-section (1) of Section 28 includes the claim to a contractual tenancy protected by the Rent Act and a declaration in respect thereof. I am, therefore, unable to uphold the contention raised by Mr. Mehta that the trial Court had no jurisdiction to entertain the present suit. Since the only contention raised by Mr. Mehta fails, the Civil Revision Application fails and is rejected. Rule is discharged with costs.