
(2002) 11 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 4708 of 2002

Prakash Sadashiv Waghmare and Others

APPELLANT

Vs

Anil Yashwant Joshi

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 4 ALLMR 217 : (2004) 106 BOMLR 332

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.B. Naik, J.—Heard Shri P.M. Shah, learned Senior Counsel i/b Shri L.B. Pallod, Advocate for the Petitioners.

2. The present writ petition is filed under Article 227 of the Constitution challenging the concurrent orders passed by the Trial Court and confirmed by the Lower Appellate Court. The present proceeding arises out of the suit being RCS No. 587/94 filed by the present Respondent-landlord claiming possession of a portion of property having Municipal House No. 389 situate at Chitale Road, Ahmednagar. The parties herein will be referred to as "Defendants" and "Plaintiff" respectively hereafter. The present petitioners are the defendants and the respondent is plaintiff.

3. It is the case of the plaintiff that the father of the plaintiff let out the suit properly to the defendant No. 1 on the monthly rent of Rs. 150/- + Rs. 6.50 electricity charges. After the death of plaintiffs father, his mother Pushpatai used to collect the rent from the tenants and used to issue receipts. The mother of the plaintiff died in 1992. It is the contention of the plaintiff that the defendant No. 1 had paid rent till April, 1992. Thereafter the plaintiff asked the defendant No. 1 to pay the rent and permitted increases, but the defendant No. 1 avoided to pay the said rent. It is contended that the defendant No. 1 had not paid the rent and

permitted increases and, therefore, has committed default. It is contended that on this ground, the plaintiff is entitled to the possession of the rented premises. It is contended that the plaintiff is in the service of Kinetic Company at Ahmednagar. The wife of the plaintiff has claimed possession from the defendants by issuing notice through her advocate. Thereafter defendants filed Misc. Application No. 97/1981 which was ended in compromise and rent of the suit premises is fixed at Rs. 150/-. There is change in the need of the plaintiff. It is contended that son of the plaintiff viz. Abhijit, who is 20 years of age and taking education, intend to start business and for that purpose, the plaintiff needed the rented room which is in the occupation of the defendants. It is contended that except the suit property, the plaintiffs has no other property to start the business of his son. It is contended that the son of the plaintiff is possessing the skill, knowledge and experience required for the business which he intends to start and, therefore, the suit property is required genuinely, bona fide and for immediate purpose. It is also contended that the defendant No. 1 has started his dispensary in other premises and hence he is not in need of the suit property. It is contended that if possession is not handed over to the plaintiff great hardship will be caused to the plaintiff. On these averments the plaintiff claimed possession of the suit property.

4. The suit was resisted by the defendants and the defendant No. 3 has filed written, statement and denied the material allegations raised by the plaintiff in the plaint. It is contended that the suit is bad for non joinder of necessary parties. It is contended that in the year, 1972, the defendant No. 3 has taken the suit property on monthly rent for joint family. It was agreed between the landlord and the tenant that the rent will be Rs. 150/ - per month plus electricity charges. The defendant No. 3 used to pay the rent to the father of the plaintiff and after his death to his mother. Since beginning, the defendant No. 3 is a tenant in the suit property. It is contended that sons of the defendant No. 3 are separated. The defendant No. 1, since beginning, runs a dispensary in the premises of Dr. Tambe. It is contended that the suit property is not let out for any specific purpose. It is contended that since beginning the defendant No. 3 was running a grain shop in the suit premises and at present he is running a Fair Price Shop. It is contended that the defendants have paid the rent till April, 1992 and after the death of Pushpatai, he went to pay rent to the plaintiff, but the plaintiff refused to accept the rent. It is contended that there was some dispute regarding electricity charges and defendants were paying the said charges. It is also contended that there is no increase in Municipal taxes and plaintiff has never informed the defendants as to how much amount came to their share. It is contended that the defendants are ready and willing to deposit the rent or ready to pay to the plaintiff. It is contended that the family of the defendants is dependant upon the business which is run by the defendant No. 3 in the suit premises. It is contended that if the possession of the suit property is given to the plaintiff, the defendants will put to starvation and great hardship will be caused to them if decree of eviction is passed. It is contended that the need of

the plaintiff is not genuine and, therefore, the defendants prayed for dismissal of the suit. The defendant Nos. 1 and 2 have adopted the written statement of the defendant No. 3.

5. On the basis of the pleadings of the parties, the learned Trial Judge framed as many as twelve issues for his consideration. The parties to the suit adduced oral as well as documentary evidence in support of their respective cases. The result of the suit was dependant on the answers to Issues No. 1-A, 6, 8, 9 and 10. The learned Trial Judge, after considering the evidence on record and the submissions put forth by the parties, came to the conclusion that the plaintiffs need is bona fide and the plaintiff needs the suit property for starting the business of his son. Answering these issues in favour of the plaintiff, the learned Trial Judge accepted that termination of tenancy is proper and hardship will be caused to the plaintiff if the suit is dismissed. With this finding, the learned Trial Judge decreed the suit of the plaintiff by his judgment and decree dated 23.4.2001.

6. Being aggrieved by the judgment and decree passed by the 6th Joint Civil Judge, Junior Division, Ahmednagar, on 23.4.2001 in RCS No. 587/ 94, the defendants preferred appeal being RCA No. 278/2001 to the learned District Judge, Ahmednagar. The learned Extra Joint District Judge, on the basis of the pleadings of the parties, framed following points for determination, which read thus :

(1) Whether Respondent-Plaintiff proves that the appellant's tenancy came to be determined by legal and valid notice?

(2) Whether Respondent-Plaintiff proves that he requires the suit property reasonably and bona fide as alleged?

(3) Is Impugned judgment and decree needs to be interfered?

7. Considering the pleadings and evidence on record, the learned Lower Appellate Court came to the conclusion that the need of the plaintiff is genuine and the plaintiff requires the property for personal use and occupation of his son and accordingly by judgment and order dated 19.7.2002 dismissed the appeal and confirmed the judgment and decree passed by the Trial Court.

8. Feeling aggrieved by both these judgments and decree passed by the Trial Court and the Lower Appellate Court, the present writ petition is filed.

9. Shri P.M. Shah, learned Senior Counsel contended that the finding which has been recorded by the Lower Appellate Court has no basis and in fact the Appellate Court has, made out a different case In order to confirm the judgment and decree passed by the Trial Court. Shri Shah brought to my notice the observations made by the Lower Appellate Court in para 18. It was contended that one Kulkarni was occupying a room in the suit premises which has vacated by the said tenant and the landlord - plaintiff has accepted the possession of the said room. However, the learned Senior Counsel contended that this fact was brought on record and the plaintiff has accepted the fact that Shri Kulkarni has

handed over the possession to the plaintiff. Shri Shah commented that the Lower Appellate Court erroneously observed that there is no record to show that Shri Kulkarni has handed over the possession of the property. The learned Senior Counsel, therefore, contended that the approach of the Lower Appellate Court is not in consonance with the spirit and object of the Rent Act. Shri Shah further contended that if this fact of vacation of room by another tenant Shri Kulkarni, which is not much in dispute, would have been accepted, the result could have been different.

8. I have to consider this submission of the learned Senior Counsel alongwith the findings which have been recorded by the Lower Appellate Court. The Lower Appellate Court has considered this aspect of vacation of room by Shri Kulkarni and observed thus :

On careful perusal of the documentary evidence, it is seen that building is consisted of double storied building. Three rooms situate at the ground floor and three rooms at first floor. Out of three rooms on ground floor, one is in occupation of appellants, one is in dilapidated condition and there is a kitchen of the respondents in the room in which Kulkarni was residing. At first floor, there exists three rooms out of that one is dilapidated, in one room class of attorney-holder is conducted and one is bedroom.

Having considered this finding and considering the fact that the Lower Appellate Court has considered the condition of the property and did not accept the contention of the defendants, it is to be noted here that the suit was filed by the landlord for the bona fide requirement i.e. for starting business of his son and, therefore, selection of premises is within the domain of the landlord. The tenant cannot compel or dictate the landlord to accept some other portion of the property to start the business. It is to be noted that it is the case of the plaintiff his son Abhijit, who want to start the business in which he is qualified and for that purpose, these premises are selected. It has come on record that the suit premises is being used initially as grain shop and thereafter Fair Price Shop and this means that the portion of the house was being used for commercial purpose and the property is required by the landlord for starting the business of his son. Even though it is accepted that Shri Kulkarni has vacated the room, this will have no effect on the demand made by the landlord as admittedly the suit room is being used for commercial purpose. Therefore, in my judgment, it is not necessary to consider the effect of vacating the room by Mr. Kulkarni and even if this would have been considered by the Lower Appellate Court, no different result would have come out.

9. Both the Courts below have examined the evidence on record led by the plaintiff and defendants as a whole and have recorded clear findings that the plaintiff has established the need which is bona fide and reasonable. These findings of fact cannot be interfered with in exercise of writ jurisdiction. It is well settled that the Courts cannot ordinarily doubt the bona fide need of landlord nor the Courts can dictate to the landlord as to how the premises owned by him shall

be used. If the contention of the learned Senior Counsel is accepted, then the Courts have to direct the landlord to use other room, i.e. vacated by Kulkarni, which will be contrary to the well settled principal. It is sufficient for the landlord to express his desire to occupy the premises which are owned by him. In the present case, the plaintiff has produced ample evidence to establish the bona fide need and that evidence is appreciated properly and the both the Courts below have accepted the case of the plaintiff and, therefore, no infirmity can be found in the judgments of both the Lower Courts.

10. I find from the judgment of the Lower Appellate Court that the Lower Appellate Court has considered the evidence on record in proper perspective and confirmed the finding. This Court, in its jurisdiction under Article 227 of the Constitution of India, cannot reappreciate the evidence and come to a different conclusion. This is not permissible as held by the Apex Court in the case of AIR 1975 1297 (SC) and the recent judgment of the Apex Court in the case of Roshan Deen Vs. Preeti Lal, .

11. in view of this position and in view of the fact that both the Courts below have concurrently held that the need of the landlord is bona fide and the property is required for starting the business for the son of the landlord, which is a finding of fact, no interference is called for.

12. Petition is, therefore, summarily dismissed.

13. Three weeks" time is granted to the petitioners to vacate the premises on giving usual undertaking within one week.