

(1988) 03 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 3009 of 1979, converted from Civil
Revision Application No. 1323 of 1979

Rajgor Shantilal Shivji

APPELLANT

Vs

The Trustees of Jivibai alias Mongibai Will Trust and Others

RESPONDENT

Date of Decision : 16-03-1988

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29(3)
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : AIR 1989 Guj 57 : (1988) 2 GLR 802

Hon'ble Judges : P.M. Chauhan, J

Bench : Single Bench

Advocate : H.M. Chinoy, for the Appellant; Suresh M. Shah, for the Respondent

Judgement

1. The petitioner submitted an application for fixation of standard rent of the premises in his possession asserting his right as tenant, but the respondents Nos. 1, 2 and 3, the Trustees of Jivibai alias Mongibai Will Trust denied the relationship of tenant and landlord and contended that the petitioner was in unauthorised occupation of the premises consisting of one room for sometime prior to the date of service of notice to the petitioner as the petitioner is the son of the pujari of the temple who is also occupying certain portion of the building. As the dispute was about the relationship of tenant and landlord, the learned trial Judge raised issue and the parties led the evidence before the Trial Court. On appreciation of the evidence, the learned Trial Judge held the petitioner as tenant, but the learned District Judge in appeal did not agree with that finding observing it to be perverse and not according to law and allowed the revision application holding that the petitioner has failed to establish that he is the tenant of the premises. The judgment of the learned District Judge is assailed in this Special Civil Application under Art. 227 of Constitution of India.

2. Shri Chinoy, learned advocate for petitioner submitted that the learned District Judge has exceeded the jurisdiction vested in him under Sub-sec. (3) of Section

29 Bombay Rents, Hotel and Lodging House Rates Control Act (to be referred as Bombay Rent Act) as the judgment of the District Judge is simply based on appreciation of evidence. Referring to the judgment, Shri Chinoy submitted that the appreciation of evidence by the District Judge is contrary to the appreciation of evidence by the Trial Judge and the finding of the District Judge is perverse and not according to law, and therefore, this Court should exercise supervisory jurisdiction under Art. 227 of Constitution of India.

3. The learned District Judge held the judgment by the Trial Court as perverse and not according to law for various reasons, viz. i) the origin of tenancy was not established; ii) the conduct of the petitioner in not replying to the notice in which it was alleged that he was unauthorisedly occupying the premises; iii) the inadmissible evidence, i.e. certificate issued by the Municipality was accepted and relied on; iv) adverse inference drawn against respondents Nos. 1 to 3 as the account books were not produced; v) evidence of the some of the witnesses of the petitioner accepted even though their veracity was doubtful and vi) the possession of the premises by petitioner was explained by the respondents Nos. 1 to 3.

4. The learned District Judge observed that the petitioner in his evidence has not stated as to from whom he had hired the premises and when he was let the premises. Admittedly, property belongs to trust and therefore it was necessary for the petitioner to establish as to from whom he hired the premises, as it was for the petitioner to prove the tenancy right. The petitioner was served notice, dated Jan. 1, 1976 and in that notice it was specifically stated that the petitioner was unauthorisedly occupying the premises. That notice was not replied and therefore the learned Judge rightly held that the same reflected on the conduct and veracity of the petitioner.

5. The Trial Judge allowed the certificate (Exh. 42) issued by the Municipality to be produced on the record and relied on it. The certificate was not proved in accordance with law and the witness was not examined by the petitioner. Till the certificate is legally proved or admitted by consent the Trial Court should not have relied on the contents of the certificate. If at all the petitioner wanted the certificate to be relied on, he should have proved it in accordance with law by examining the witness who could testify the contents of the certificate. The petitioner could have produced the certified extract of relevant register which is the public document. That could have been accepted in evidence without the requirement of formal proof as being certified copy of a public document. It appears that the learned Civil Judge has attached more evidentiary importance to the contents of the certificate without the valid and legal proof of contents of it. By that the learned Civil Judge committed an error of law.

6. The learned civil Judge attached much importance to the fact that the account books were not produced by respondents Nos. 1 to 3. It was stated before the learned Civil Judge that the account books were produced for audit purpose and therefore could not be produced. It transpires that subsequently the account

books were produced but the petitioner did not seek permission of the Court to inspect the account books and recall the witness for cross-examination. It is true that the account books were produced after the evidence was over. but before the judgment was delivered, the petitioner could have requested the Court to allow the inspection of account books and cross- examination of the witnesses. It is true that when the entries are made in the account books and the account books are not produced, adverse inference can be drawn but in the instant case the evidence was led by the respondents Nos. 1 to 3 that no entries about an\\ payment by the petitioner were made in the account books as no such payment was ever made. Under these circumstances, question of entry in the account books would never arise, and therefore, no adverse inference could have been drawn against respondents Nos. 1 to 3. The learned Civil Judge, therefore, committed error of law in drawing the adverse inference and relying much on the said inference.

7. The fact that the person asserting the tenancy right is in possession of the premises should weigh with the court in appreciation of evidence. But in the instant case. the respondents Nos. 1 to 3 asserted that the petitioner had taken unauthorised possession of the premises as the father of the petitioner is employed "pujari" of the idol in temple of the trust and is allowed to stay in some portion of the building in which suit premises are situated. The petitioner being son of pujari unauthorisedly occupied the premises which were reserved for the purpose of lodging the saints whenever they visit the temple. That aspect is already explained by the respondents Nos. 1 to 3 which was not appreciated in right perspective by t he learned trial Judge. Learned accepting their evidence. it is true that the said observation by the learned District Judge was the result of appreciation of evidence of the witnesses. but merely because of that it cannot be accepted that the learned District Judge exceeded t he jurisdiction vested in him, "The observation by the learned District Judge that the judgment by the learned Civil Judge is perverse and not according to law, Therefore, should, be accepted.

7A. In view of above discussion, it is not necessary for me to consider the extent of jurisdiction of the District Judge, in exercise of the jurisdiction under Sub-section (,3) of Section 29 Burnaby Rent Act, 1947. However, I would like to consider that aspect in short. Sub-see. (3) of See. 29 of Bombay Rent Act provides that in case where appeal is not provided the District Court, may for the purpose of satisfying itself that the decree or order made was according, to law, call for THC case in which such decree or order was made and pass such order with respect thereto as it thinks fit. The District Judge has to therefore. satisfy himself on the aspect as to whether the decree or order is according to law. It is now well settled law that the revisional -jurisdiction vested in the High Court under sub-section (2) of Section 29 or the revisions] Jurisdiction vested in the District Court under Sub-see. (3) of Section 29 Bombay Rent Act is wider than the jurisdiction vested u/s 115 Civil Procedure Code. In Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), the provisions of Section 35 of the Delhi and

Ajmer Rent Control Act, which were in part materia with the provisions of Sub-secs. (2) & (3) of Section 29 Bombay Rent Act.. are considered by the Supreme Court and phrase "according to law" is interpreted as having wider connotation. It is observed that:

"The phrase "according to law" refers to the decision as a whole, and is not to be equated to error of law or of fact simpliciter. It refers to the overall decision, which must would not be if I District Judge considered the evidence of the there - is a miscarriage of justice due to a witnesses. Sukhdev Bhailal Mehta, Shivalal mistake of law. The section is thus framed to confer larger powers than the power to Correct, error of jurisdiction to which S. 115 is limited. observed that their evidence cannot be but it must not be overlooked that the section accepted and the learned trial Judge erred in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might Think fit, is controlled by the opening words where it says that the High Court may send for the record of the case to satisfy itself that the decision is "according to law". It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy. but the Act says that there is to be no further appeal".

8. The same view is subsequently expressed in the case of Phiroze Bamajji Desai v. Chandrakant M. Patel AIR 1975 SC 1059 wherein the observations are extensively quoted. Similar observation in Bell and Co. Ltd. Vs. Waman Hemraj, is extensively extracted in the said judgment. After quoting with approval said view, it is observed that the same view must also govern the interpretation of Section 29 Sub-section (3) of the Bombay Rent Act. It is then observed that "the High Court can, therefore interfere with the decision of the lower court u/s 29, Sub-section (3) only if there is miscarriage of justice due to a mistake of law. The High Court cannot reassess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the lower court is wrong and the lower court should have reached a different conclusion of fact from what it did: in other words, the High Court cannot depreciate the evidence and substitute its own conclusions of fact in place of those reached by the lower court".

9. In the case of Smt. Kusumben Popatlal Vs. Mahendrakumar Parmananddas Popat, , while considering the provisions Of Sub-section (3) of Section 29 Bombay Rent Act, the learned Judge sought the support from the observations of Supreme Court in Phiroze Bamajji Desai v. Chandrakant M. Patel and then observed that the revisional jurisdiction which the District Court exercises under sub-section (3) of S. 29 is limited to correction of errors. of law. It is observed, "That is what in my opinion. the expression "according to law, used in Sub-sec, (3) of Section 29 connotes". In that case, the tenant led the evidence for the fixation of standard rent and the learned Trial Judge did not accept that evidence. It was held that it being the pure finding of fact, it was not open to the District Judge to depreciate the evidence as there was no error of law in the judgment by

the Trial Court. It was, therefore, held that the District Judge had exceeded his jurisdiction by reappreciating the evidence of the tenant and his witness and accepting it. It is apparent that in the said judgment the question of fact only was involved. The trial Court had appreciated the factual aspect of the case and the District Judge on appreciating the evidence came to contrary conclusion which was not permissible in exercise of jurisdiction under Sub-section (3) of Section 29 of the Act,

10. The Supreme Court, while considering the provisions of Sub-see. (2) of Section 29 of Bombay Rent Act in the case of Bhaichand Ratanshi Vs. Laxmishanker Tribhoyan, has observed that the High Court while exercising jurisdiction under Subsection (2) of Section 29 has wider jurisdiction than the one exercisable u/s 115 CPC and its revisional jurisdiction should only be exercised for the limited purpose with a view to satisfying itself that the decision was according to law.

11. The law, on the point being well settled, the jurisdiction of the District Judge, is limited as discussed above. It is clear that the learned Trial Judge while appreciating the evidence has relied on the inadmissible evidence on record and had drawn adverse inference which was not permissible, and therefore, the learned District Judge has rightly held that the judgment by the Trial Court is perverse and not according to law. The judgment by learned District Judge is! according to law and cannot be said to be perverse. 1, therefore, do not find any reason to interfere with the judgment by the District Judge, in exercise of jurisdiction under Art. 227 of Constitution of India. Petition dismissed with no order as to costs. Rule discharged.

12. Petition dismissed.