
(1999) 09 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 487 of 1995

Ramakant M. Tipnis

APPELLANT

Vs

Ravindra Lakhamsey Malde

RESPONDENT

Date of Decision : 16-09-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28, 5

Citation : (2000) 1 ALLMR 20 : (2000) 102 BOMLR 279

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Judgement

R.M. Lodha, J.—Heard Mr. Ramakant M. Tipnis, the Appellant in person.

2. By way of this First Appeal filed by the original Plaintiff, it is prayed that the Judgment and Order passed by the City Civil Court, Bombay on 9th March, 1993 whereby the said Court dismissed the Plaintiffs Suit, be set aside and the Plaintiffs Suit for possession in respect of the suit premises be decreed.

3. The brief facts which may be necessary for the disposal of the First Appeal are :

Mr. Ramakant M. Tipnis - the Appellant herein (Original Plaintiff) is the owner of the building known as Mata Niwas. A portion of the said building marked Block No. 17, admeasuring about 100 sq. ft. was given in possession by the original Plaintiff to Ravindra L. Malde - Respondent herein (Original Defendant) by an Agreement titled Tenancy Agreement dated 22nd October, 1973 for a monthly rent of Rs. 40/- on the terms and conditions stated therein. In the month of March, 1990 when the original Plaintiff proceeded to renovate the first floor of the said building, during the course of renovation he found that the original Defendant had erected an open sky water closet and had taken water connection from the municipal storage illegally and without the permission and knowledge of the original Plaintiff. The original Plaintiff, therefore, by his Notice dated 17th March, 1990 terminated the tenancy agreement and demanded possession of the

premises. The original Plaintiff also came to know that the original Defendant had acquired suitable full fledged residence at C-60 Highway Premises Cooperative Society, Sion Causeway North, Sion, Mumbai. According to the original Plaintiff on acquisition of the said residential flat by the original Defendant, the Defendant did not use the suit premises for more than six months for which it was let out and accordingly by the suit filed by him on 19th June, 1990, the original Plaintiff prayed for decree for possession of the suit premises from the original Defendant.

4. The original Defendant upon service of writ of summons, contested the Suit by filing Written Statement and set up the defence that since he was monthly tenant of the original Plaintiff in respect of the suit premises, the suit is only triable by the Court of Small Causes and the City Civil Court has no jurisdiction. In the Written Statement the original Defendant stated that the suit premises consist of one room, including terrace and water closet which is in his exclusive possession. He denied that he erected any W.C. or taken water connection illegally or otherwise. He set up the defence that he was occupying the premises, as monthly tenant and the original Plaintiff was not entitled to decree for possession.

5. The Trial Court framed various issues and after recording the evidence of the original Plaintiff and the original Defendant vide its Judgment and Order dated 9th March, 1993 held that it has no jurisdiction to try and entertain the suit for eviction filed by the landlord against the tenant. Aggrieved by the said Judgment and Order, the original Plaintiff has come up in appeal.

6. Mr. Ramakant M. Tipnis, the Appellant who appeared in person, submitted that the suit premises are neither "tenement" within the meaning of Section 5(12) nor premises within the meaning of Section 5(8) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short Rent Control Act) and, therefore, the suit was only triable by the City Civil Court and not Small Causes Court. According to him in view of the premises in question, Section 28 of the Rent Act has no application and the Trial Court erred in holding that the suit for possession was only triable by the Small Causes Court. In the alternative, he urged that if the Trial Court held that it had no jurisdiction to entertain and try the suit, due to bar of Section 28 of Rent Control Act, the said Court ought to have returned the plaint to the Competent Court.

7. The original Defendant was put in possession of the suit premises under the Agreement, titled Tenancy Agreement dated 22nd October, 1973. Though before the Trial Court the original Plaintiff set up the case that the said Agreement was only styled as Tenancy Agreement but was in fact not a Tenancy Agreement and was not intended to be acted upon, during the course of oral submission, the original Plaintiff did not dispute the fact that the original Defendant was inducted as tenant in the suit premises under the Tenancy Agreement. The suit premises in the Tenancy Agreement dated 22nd October, 1973 are described as a terrace room at the 4th floor level, admeasuring 100 sq. ft. with the space underneath at the 3rd floor level. The said premises had been referred in the Tenancy Agreement as Block No. 17. The said premises were let out to the original

Defendant for a monthly rent of Rs. 40/-. In the Tenancy Agreement it is recorded that there is no facility of W.C. and washing place for the said premises and the landlord does not assure or hold any guarantee to the tenant to provide such facility or to incur a liability thereof. However, it was provided in the Tenancy Agreement that the tenant shall be at liberty to take advantage of and may utilize the sanction, if granted by the Municipality for construction of W.C. and bathroom at the 4th floor level at his own cost for which there will be no increase in the monthly rent but the tenant shall pay additional ground rent or additional tax.

8. The Tenancy Agreement dated 22nd October, 1973 leaves no manner of doubt that the premises in question viz. Block No. 17 were let out by the original Plaintiff to the original Defendant for a monthly rent of Rs. 40/- and the relationship between the parties is that of landlord and tenant. By the present suit the original Plaintiff prays for recovery of possession from the original Defendant. The question is whether the suit is entertainable and triable by the City Civil Court as contended by the original Plaintiff or the suit is exclusively triable by Small Causes Court as held by the Trial Court.

9. Section 28 of the Rent Control Act reads thus :

28. Jurisdiction of Courts

(1) 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 provision, be within its jurisdiction -

(a) in Greater Bombay, the Court of Small Causes, Bombay.

[(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Causes is established under the Provincial Small Causes Courts Act, 1887, such Court and]

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises, are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try 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 [or between a licensor and a licensee relating to the recovery of the licence fee or charge] and to decide any application made under this Act and to deal with any claim or question arising out of this 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, proceedings, or application or to deal with such claim or question.

[(2)(a) Notwithstanding anything contained in Clause (aa) of Sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Cause Courts Act. 1887, and transfer the same for trial or disposal of the

Civil Judge (Senior Division) having ordinary jurisdiction in such area.]

(b) Where any suit, proceeding or Application has been withdrawn under Clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn.

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under Clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, deemed to be the Court of Small Causes.]

Explanation:- In this section "proceeding" does not include an execution proceeding arising out of a decree passed before the coming into operation of this Act.

From the perusal of said Section 28 it is clear that it excludes the jurisdiction of all Courts other than the Courts of the Small Causes to try any suits, proceedings or application between a landlord and a tenant and to deal with any claim or question as are referred to in this section including the claim relating to recovery of possession of any premises, to which provisions of Rent Control Act are applicable. The expression "premises" is defined in Section 5(8) of the Rent Control Act which reads thus :

Section 5(8) "premises" means -

(a) any land not being used for agricultural purposes,

(b) any building or part of a [building let or given on licence separately] (other than a farm building) including -

(i) the garden, grounds, garages and outhouses, if any, appurtenant to such building or part of a building.

(ii) any furniture supplied by the landlord for use in such building or part of a building.

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

but does include a room or other accommodation in a hotel or lodging house.

The plain meaning of Section 5(8), particularly Clause (b) would clearly show that any building or part of a building let out or given on licence separately falls within the definition of premises. The premises which had been let out by the original Plaintiff to the original Defendant which are described in Tenancy Agreement as the terrace room at the 4th floor level, admeasuring 100 sq. ft. with space underneath at the 3rd floor level, definitely falls within the definition of premises since it is a part of the building Mata Niwas and let out separately to the original Defendant.

10. The definition of "tenement" upon which reliance was placed by the Appellant is given in Section 5(12) of Rent Control Act which means a room or group of rooms rented or offered for rent as a unit. What is relevant for the purposes of Section 28 of the Rent Control Act is that no Court other than Small Causes Court has jurisdiction to entertain and try the suits or proceedings between a landlord and tenant relating to recovery of possession of any premises. Section 28 does not use the expression "tenement" and instead uses the expression "premises" and since the suit premises clearly fall within the meaning of premises as defined in Section 5(8) and suit has been filed by the landlord-plaintiff for recovery of possession of premises as landlord against the tenant, the suit was apparently not entertainable and triable by the City Civil Court. The original Plaintiff filed the suit before the City Civil Court which had no jurisdiction whatsoever in the matter and I do not find any justifiable reason to differ with the view taken by the Trial Court that it had no jurisdiction in the matter and the suit filed by the original Plaintiff could only be entertained and tried by the Small Causes Court.

11. The next question that arises is : in view of the findings and the provisions of Section 28 of the Rent Control Act that City Civil Court had no jurisdiction to deal with the suit, what course should have been adopted. I find merit in the contention of the Appellant - original Plaintiff that once the City Civil Court concluded that it had no jurisdiction in the matter, it ought to have returned the plaint to the Competent Court of jurisdiction instead of dismissing the suit. I am satisfied that since the City Civil Court had no jurisdiction in the matter, it ought to have returned the plaint to the Small Causes Court having jurisdiction in the matter and accordingly to that extent the Order passed by the Trial Court stands modified.

12. Consequently the First Appeal is disposed of as under :

(1) The finding recorded by the City Civil Court, Bombay in its Judgment and Order dated 9th March, 1993 that it has no jurisdiction to try the suit is upheld.

(2) The operative Order passed by the City Civil Court, Bombay on 9th March, 1993 dismissing the suit with costs is modified by directing that the plaint lodged by the original Plaintiff on 19th June, 1990 in the City Civil Court, Bombay be returned to the concerned Small Causes Court having jurisdiction in the matter.

(3) The concerned Court having jurisdiction in the matter, after its presentation and return, is expected to hear and decide the suit expeditiously since the matter is quite old and also looking to the old age of the original Plaintiff.

13. Since the Respondent has not chosen to appear despite service, parties to bear their own costs.

14. Certified copy expedited.