

(2004) 12 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 2922 of 1990

Ramesh Suchak since deceased by his LRs. Pushpa Ben and
Others

APPELLANT

Vs

Shyamsunder Suroshiya since deceased by his LRs.
Ramkumari Suroshiya and Others

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 — Section 13(3)
Maharashtra Regional and Town Planning Act, 1966 — Section 45
Registration Act, 1908 — Section 17, 17(6), 49

Citation : (2005) 2 MhLj 629

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Savitri Dave, for the Appellant; A.B. Choudhari, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—At the outset it needs to be stated that this writ petition was finally disposed of on 4th August, 2000 by this Court with a direction of remand to appellate Court on the point of admissibility of partition deed which is in dispute between the petitioner/tenant and respondent/landlord. The contentions with regard to the bona fide requirement of respondent/landlord were kept open. This judgment was challenged in L.P.A. No. 94 of 2000 by the respondent/landlord and grievance made was that there was no need to remand the matter back and the Division Bench after noticing that the partition have been litigating since the year 1976, held that the learned Single Judge should have proceeded to examine the matter on merits instead of remanding it. The Division Bench requested the Single Bench to dispose of the writ petition expeditiously preferably within the period of three months, that is how the matter started again and it was listed before this Court on 1-11-2004. The legal heirs were brought on record. The matter was thereafter listed on 23-11-2004,

2541-2004 and thereafter on 6-12-2004.

2. The respondent landlord filed an application u/s 13(3)(i)(ii) and (vi) of C.P. and Berar (Letting of Houses) and Rent Control Order, 1949 (for short "Rent Control Order") on 4th December, 1976 before the Rent Controller, Yavatmal. He sought premises for bona fide requirement on the ground that he requires them in his own personal bona fide occupation. He stated that at the time of purchase of this property on 29-8-1975 the respondent landlord and his brothers were joint and respondent was residing at Wardha and attending his hospital at Yavatmal for three days in a week. He further stated that he separated from his brothers and landlord by a partition deed dated 14-6-1976 and has decided to reside permanently at Yavatmal. He has stated that house occupied by him at Wardha has been allotted to his brother and further he has increased his days of visit to Yavatmal from 3 to 5. This application was opposed by petitioner/tenant and ultimately on 19th October, 1978 the Rent Controller, Yavatmal granted permission to respondent to terminate tenancy only under Clause 13(3)(vi) of Rent Control Order. The petitioner/tenant challenged this order of Rent Controller by filing appeal under Clause 21(2) of Rent Control Order before Resident Deputy Collector, Yavatmal and the R.D.C. allowed the appeal. It appears that the Resident Deputy Collector held that there was nothing on record to show that respondent/landlord is residing as tenant of his brother in brother's house. The landlord challenged this appellate order in Writ. Petition No. 1981 of 1930 and on 22nd October, 1986 this Court remanded the matter back to Resident Deputy Collector to permit both the parties to adduce additional evidence and shall permit the parties to properly, amend their pleading only on the point of 13(3)(vi). After the matter went back to R.D.C. the respondent/ landlord moved application for amendment to point out that he is residing as tenant of his brother Dr. Santosh Kumar who is also Dental Surgeon and is running Hospital at Yavatmal. It was stated that the portion touching Mahajan Wadi Road from Nazul Plot No. 15/2 and 15/3, Sheet No. 49-A was allotted to the share of Dr. Santoshkumar and his brother and during pendency of appeal Dr. Santoshkumar has constructed a building on the said portion. The petitioner/ tenant effected consequential amendment to his written statement and denied this case. It appears that thereafter parties have led evidence before Resident Deputy Collector. The respondent examined himself and his brother Santoshkumar. The appellate Authority on 8th June, 1990 delivered the order and dismissed the appeal. This order forms subject-matter of challenge in the present petition. As already stated above, writ petition was once allowed on 4th August, 2000 and the matter was remanded back to R.D.C., Yavatmal to find out admissibility of partition deed. However, because of orders passed in LPA on 13th January, 2004 the said order of remand has been quashed and set aside and the matter is remanded back for fresh decision on the point of admissibility of the said partition deed and also on the point of bona fide need of the respondent.

3. I have heard Adv. Smt. S.J. Dave for petitioners/tenants and Adv. A.B. Choudhari for respondent/landlord.

4. Smt. Dave while arguing the matter has invited attention of this Court, to the fact that during pendency the petition has been amended twice i.e. on 22-1-1997 and 4-8-2000 to place on record subsequent events. That subsequent events are, brother of respondent/landlord viz. Santoshkumar has left Yavatmal about five years back and is residing at Adilabad. The amendment is effected in 1997 and therefore, the stand of petitioner/tenants appears to be that the said brother has left Yavatmal since 1992. It is further mentioned that all three daughters of landlord have got married and only landlord and his wife are presently residing in one house which consists of seven rooms on ground floor and seven rooms on first floor excluding latrines and bath rooms. It is stated that out of these rooms only one room is in possession of Kutemate Tailor. It is further stated that out of these rooms the respondent/landlord is using two rooms for his dispensary and big portion of house has been let out to Mahatma Fule Magasvargiya Nagri Sahakari Bank, Yavatmal and recently (in 1997) one room was let out to Mirror Beauty Parlour. Pointing out these subsequent events the learned counsel for tenant contends that apart from tenanted house the respondent landlord has got other house at Yavatmal and now entire house is at his disposal and therefore, there is no need to grant permission to the respondent as on account of subsequent events his need is completely extinguished. She further argues that the reason put-forth by respondent, i.e. partition dated 14-6-1976, the suit house felt to the share of respondent is apparently false as there is no such partition and landlord is staying in his own house which is separate from suit house. She further contends that explanation put-forth by respondent that he is residing as tenant of his brother Santoshkumar in the said other house is by way of afterthought and false. She further contends that the stand of respondent that front portion of Plot Nos. 15/2 and 15/3 fell to the share of Dr. Santoshkumar and he has constructed the building on the said portion is also false. She has invited attention of the Court to the documents which are proved before the Appellate Authority, namely, commencement certificate for construction issued u/s 45 of Maharashtra Regional and Town Planning Act, 1966 by Municipal Council, Yavatmal as Planning Authority in favour of respondent and his brother. She has also invited attention to the sanction of construction and submits that this plan of proposed residence-cum-hospital of both the brothers is signed by both of them. She points out that the plan is submitted after the alleged partition and commencement certificates are issued on 16-8-1978 and 26-2-1979 in the name of respondent and Santoshkumar. She therefore, contends that the story of partition is only an eyewash with a view to get rid of the petitioner/tenant. She further invites attention of the Court to the partition deed and states that by the said Deed Partition has been brought about. She argues that the deed does not record the past transaction i.e. according to her it is not Memorandum of Partition. She therefore, contends that the landlord did not approach the authorities with clean hands and hence, is not entitled to any permission. She has relied upon the provisions of Sections 17 and 49 of the Registration Act and also case reported at Shiromani and Others Vs. Hem Kumar and Others, . She contends that once it is shown that there is no partition and that the respondent

did not approach the Rent Control Authorities with clean hands, the application before the Rent Controller filed by respondent/landlord must be dismissed. She argues that the petitioner has demonstrated that respondent/landlord is in occupation of his own house and his case before the Rent Controller is not that of inadequate accommodation. According to her, the case of inadequate accommodation needs to be viewed in entirely different perspective.

5. As against this, Adv. Choudhari appearing for landlord contends that the petitioner/tenant is trying to beat around the bush by raising hyper technical points. He contends that the respondent/landlord was staying in Wardha house of the family and used to come to Yavatmal to attend his hospital three times a week and therefore, residing temporarily with his brother. He states that he decided to shift to Yavatmal and, therefore, he needs independent house for locking his hospital and residence. He states that partition deed needs to be read entirely and is to be construed accordingly. He states that the partition deed is only reproduction of oral partition by metes and bounds between the family members and therefore, it is only Memorandum. He relies upon paragraph No. 9 of the judgment of the Hon'ble Apex Court, reported at AIR 1988 SC 881 to argue that such Memorandum need not be registered. He further states that the sanction plan, is properly explained by witness Santoshkumar and two commencement certificates on record do not confer title upon the respondent. He states that these two documents are eclipsed by partition deed. He further contends that the author of those certificates is not examined. He further contends that it is not the case of petitioner/tenant that the construction by Santoshkumar has extinguished the bona fide need of this respondent and hence, such a case cannot be allowed to be argued. He contends that the relationship of landlord and tenant is proved between the parties and the bona fide need is also demonstrated. About subsequent events he points out that in return the subsequent events are denied by him. He states that out of respondents' three daughters youngest daughter Ku. Smita got married on 17-6-1996 and it is intercaste marriage. Her husband Surendra Meshram is not well educated and runs a small Tea Kisok at Yavatmal. His father is residing in slums. He further states that his other daughter along with her husband Vijaykumar Jaiswal and two issues is residing with respondent since more than 12 years and he has produced on record ration card to substantiate this. He also points out that Ward Member has also issued certificate dated 14-7-1998 about this stay of his daughter and her husband with respondent. He points out that respondent/landlord has no son and his two daughters along with their husbands and family are residing with respondent. He points out that sizes of rooms of house presently in occupation is extremely small to enable the respondent to use it conveniently as hospital. He states that the rooms are 8" x 12", 8" x 8" and 6" x 6" etc. and Dining Room admeasuring 8" x 8" is required to be used as Operation Room. It is admitted that brother Santoshkumar is gone to Adilabad but it is denied that. Santoshkumar has surrendered his rights in the property. Creation of subsequent tenancies by respondent is denied. It is contended that

his brother Dr. Santoshkumar before leaving for Adilabad let out the portion to Bank and Beauty Parlour.

6. Adv. Choudhari invites attention to the fact that inadvertently no consequential amendment was effected in reply to paragraph No. 14(e). A copy was served on other side on 29-11-2004 and the parties agreed to proceed further with hearing considering the amended return as per this application. In the said amended paragraph No. 14(e) the respondent has again pointed out his need and denied letting of one room in favour of Kutemate Tailor. In the said amendment the respondent has contended that petitioner/tenant is keeping the tenanted premises locked and they have constructed their respective house. However, this portion is denied by petitioner by pointing out that they are not keeping the premises locked but are staying there.

7. The need as pleaded by respondent/landlord before the Rent Controller is that he got tenanted house in partition deed dated 14-6-1976 and he wants to reside permanently at Yavatmal because the house occupied by him at Wardha is allotted to his brother's share. He has stated that therefore, he needs house occupied by present petitioner for his personal and bona fide occupation. Thus, it will be seen that the partition deed dated 14-6-1976 and partition between family members is therefore, important. If this partition is not proved, the respondent landlord will not succeed in establishing his need as pleaded. The partition deed dated 14-6-1976 therefore, cannot be avoided. During arguments on 25-11-2004 also both parties accepted this situation. Admissibility of said partition deed pure question of law. It further found that the said issue was kept open by order dated 14-7-1978 by R.D.C. while remanding the matter back to Rent Controller. On 19-11-1978 when Rent Controller proceeded with inquiry and allowed application of the landlord for permission, the Rent Controller did not adjudicate upon the issue of admissibility. Before the learned Single Judge on previous occasion when amendment in this respect was sought by the petitioner/tenant it was objected on the ground that the partition between the family members has attained finality and cannot be reopened. The arguments about oral partition/arrangement were also made and the learned Single Judge remanded the matter back to adjudicate on the issue of admissibility as the said issue went to the very root of the matter as if partition deed is found inadmissible it cannot be looked into and therefore, factum of partition will have to be held as not proved and the property will become joint family property. In that event the learned Single Judge found that the respondent/landlord would be occupying the alleged brothers' house not as tenant but as his own and hence, there would not be any cause of action in his favour to enable him to maintain these proceedings. In view of discussion about, the need of respondent made above it is clear that issue of admissibility of partition deed therefore, assumes importance.

8. The counsel for petitioner/tenant has invited attention of the Court to the said document of partition on record of Rent Controller. It is Exh.A-3 on the said

record. It is titled as Deed of Partition and is type written on Stamp Paper of Rs. 5/- which is purchased on 14-6-1976. At page No. 2 in recitals after giving names of parties to the document, the document begins by mentioning that Deed of Partition is being executed in 1976. In paragraphs thereafter it is mentioned that all parties are real brothers and Smt. Annapurnabai is their mother. In next line it is mentioned that the property described below jointly belongs to all and all are its co-owners. It is further mentioned that all this immovable property is jointly enjoyed together by all till today i.e. till then. It is further mentioned that for future convenience parties personally decided not to continue joint user as before and in future everybody wants to enjoy his immovable property independently. It is mentioned that therefore, everybody has taken possession of his respective share after distribution thereof amongst themselves. It is further mentioned that as it is necessary to have the document in writing about it the present, deed of partition is being written by all brothers and mother. It is further mentioned that though the assets are in different names, as it is purchased from income of joint family property it belongs to all and it is reflected in it and distributed then the names of parties and details of property falling to their share are given in this document. It is further mentioned thereafter that the responsibility to pay taxes is of the party to whom property has gone in partition. It is further mentioned that as described earlier in the deed, the property is distributed and everybody has taken possession earlier. It is further mentioned that by virtue of this document everybody has become owner of the property received by him in partition and now nobody has any share or interest in the property which has fallen to the share of others and hereinafter no such objection will be raised. It is further mentioned that because of this document everybody has now become free to deal with the property received by him in his share and nobody would obstruct each other in this respect. It is lastly mentioned that now because of this document each recipient is free to have his share mutated in his name in municipal records, Nazul Records and other Government records. At the bottom there is a note that though partition deed is entered today, if required in future registered deed of partition will be obtained. It is further mentioned that the deed is written and executed at Wardha. The Stamp Paper purchased is also at Wardha.

9. The landlord argues that this deed records minutes of past partition, while according to the tenant the partition has taken place because of this document. It will be therefore, necessary to find out how the landlord has understood this document. This document is placed before Rent Controller by the landlord when he mentions it in his application filed before the Rent Controller on 4-12-1976. The suit property is purchased by family on 29-8-1976, father of landlord has expired on 16-2-1976. It is mentioned that sisters have executed Surrender Deed in favour of brothers on 22-4-1976. In paragraph 2 after having all these details it is mentioned "brothers of the applicant and their mother got partition between themselves by partition deed dated 14-6-1976. As per partition deed the suit house fall to the share of the applicant and therefore, the applicant alone

is absolute owner of the suit house". In paragraph 6 the landlord further mentions "application is separated from his brothers and mother by partition deed dated 14-6-1976". Thus, the case of landlord/applicant, as pleaded is very clear. He has pointed out that he has become owners of the suit house and that he has become separated by virtue of partition deed dated 14-6-1976. He has not pointed out any oral partition which has taken place before 14-6-1976. He is also not giving details of any such oral partition anywhere in the course of these proceedings. The contents of the partition deed Exh.A-3, as reproduced above, clearly reveal that till 14-6-1976 the parties have continued to enjoy the entire property as joint property and they have decided to partition it in future i.e. thereafter. The ownership acquisition is also by this document of partition and mutation is also permitted because of this deed of partition. Even if the document, is read completely, it does not show any earlier date on which partition by meets and bounds has taken place between the parties. Though at two places it is mentioned that the property is already distributed and possession accordingly has also been made in past, still the other contents of the deed of partition clearly contradict this statement. The deed has been executed at Wardha but on document there is no date put and name of its scribe is also not mentioned. 14-6-1976 is the date of purchase of stamp paper. If parties were at Wardha and properties were situated at Wardha and Yavatmal and if position as envisaged in the partition deed was already made, the date of oral partition and separation by metes and bounds would have definitely appeared in this document. Not only this the respondent/landlord would also have pleaded accordingly in his application before the Rent Controller. The case about Memorandum of Partition on which relies has been placed by Adv. Choudhari i.e. AIR 1988 SC 881, Roshan Singh and Ors. v. Zile Singh and Ors. paragraph Nos. 6 to 12 has therefore, no application here. On the contrary, in view of judgment of the Hon"ble Apex Court, reported at AIR 1988 SC 1299 it is apparent that this document is not admissible in view of the provisions of Section 17(6) Registration Act and in view of Section 49 it can be looked into only to find out intention to support. Thus, the document of partition dated 14-6-1976 is found to be inadmissible in evidence.

10. The sanctioned plan produced on record and the two commencement certificates also cast doubt upon this document. The commencement certificates are issued on 16-8-1978 and 26-2-1979 respectively and in it the suit property is also mentioned. The commencement certificate is addressed to Dr. Shyamsunder i.e. present respondent (dead through his Lrs.) and others. At the relevant time the respondent was alive and use of words "others" in both these documents clearly show that there were other owners also insofar as this property is concerned. These certificates are put to Santoshkumar who is alleged to be the owner of said structure by present respondent. Dr. Santoshkumar is examined before R.D.C. after remand. He has stated that he applied to Municipal Council and procured permission to construct. He has also stated about the map (Exh-70) which he submitted to Municipal Council for sanction. The said map

Exh-7 bears two signatures and it is to be noted that respondent as also Santoshkumar have got same initials. It is the case of petitioner/tenant that as the property is joint and belongs in both the brothers, both brothers have placed their signatures on this map. Dr. Santoshkumar appears to have been examined before the R.D.C. only to explain these two signatures. He states that he has put his signature initially as "S.R. Suroshiya" and thereafter he put his full signature as "Santoshkumar Rajelal Suroshiya". However, if first name in both commencement certificates which Municipal Council issued clearly shows that the present respondent is also owner of the said house along with Santoshkumar. Even Exh.7 mentions that it is plan of house of Shri S.R. Suroshiya and others. In cross-examination when all this was put to Santoshkumar, he was unable to point out who are those "other owners". Even the commencement certificates are put to present respondents in evidence. In it respondent has stated that commencement certificate dated 4-11-1978 is in the name of respondent . Santoshkumar. He has also stated that the plan of house of Santoshkumar does not bear his signature. He has stated that the commencement certificate may be with him and he would file it of next date. He has further stated that if after searching records original plan is discovered he would file it. The said commencement certificate or plan in original is not produced on record before the appellate Authority.

11. Under these circumstances, it is clear that partition deed dated 14-6-1976 is not admissible in evidence and cannot be looked into to hold that the respondent, landlord is owner of the suit house. The original need as pleaded that on account of the said partition deed house at Wardha fell to the share of other brothers and hence, the respondent/landlord was left to reside permanently at Yavatmal therefore, also cannot be considered.

12. The respondent/landlord, therefore, becomes one of the joint owners of the suit property which is tenanted to the petitioner but then at the same time he also becomes co-owner of the house presently in his occupation along with others. He is therefore, not a tenant of his brother Santoshkumar. The story to that effect as pleaded by amendment after remand by High Court and before appellate Authority is therefore, false, the need as pleaded is therefore, not proved and it is clear that the landlord has not approached the Rent Controller with clean hands. In view of discussion above, it is apparent that he has failed to prove bona fides of his need as also his own bona fides. He did not file the proceedings as one of the co-owners and did not even try to explain issuance of commencement certificates by Municipal Councils in joint names and also submission of plan to Municipal Council in joint names.

13. In these circumstances, it is not necessary for this Court to consider the effect of subsequent events. Those subsequent events are also giving rise to disputed questions of facts and the same cannot be determined for the first time in this petition. In these circumstances, the permission granted in favour of respondent/landlord on 8th June, 1990 by Resident Deputy Collector, Yavatmal in

Regular Civil Appeal No. 26/71/86-87 to terminate tenancy of the petitioner on the ground of bona fide need under Clause 13(3)(vi) cannot be sustained. The said order is accordingly quashed and set aside.

The Writ Petition is accordingly allowed. Rule made absolute in the above terms. However, in the circumstances, of the case, without any orders as to costs.