
(2011) 03 BOM CK 0133

In the Bombay High Court

Case No : Writ Petition No. 3072 of 1992

Ramkrishna Punjo Nehate, Since deceased by his Heirs and Legal Representatives (Hemant Ramkrishna Nehate) **APPELLANT**

Vs

Suryabhan Banaji Shinde, Vishwanath Banaji Shinde, Sharad Ramkrishna Nehate and Umakant Ramkrishna Nehate **RESPONDENT**

Date of Decision : 10-03-2011

Acts Referred:

Citation : (2011) 3 ALLMR 97 : (2011) 4 BomCR 183

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : L.V. Sangit, holding for, V.J. Dixit, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This writ petition is directed against the judgment and order dated 03.01.1984 passed by the Civil Judge Junior Division, Bhusawal in R.C.S. No. 385/1977 which is confirmed by the Additional District Judge, Jalgaon by its judgment and order dated 25th March, 1992 in Civil Appeal No. 86/1984.

2. The Petitioner is original Plaintiff along with Respondent Nos. 3 and 4 in R.C.S. No. 385/1977 filed by them against the Respondent Nos. 1 and 2 in the Court of Civil Judge Junior Division, Bhusawal, District Jalgaon under the Bombay Rents Hotel and Lodging House Rates Control Act 1947 for the possession of the suit premises, arrears of rent and future damages on the ground that the Respondent No. 1 had sublet suit premises to the Respondent No. 2 without the permission of the landlord and that Defendants Nos. 1 and 2 have made structural alterations to the suit premises without the permission of the landlord.

3. The learned Civil Judge Junior Division, Bhusawal by his judgment and decree dated 03.01.1984 dismissed the suit of the Petitioner/Plaintiff. Being aggrieved, the Petitioner filed Civil Appeal No. 86/1984 in the District Court Jalgaon. Said appeal also came to be dismissed. Hence this petition.

4. The counsel for the Petitioner submitted that, both the Courts have erred in not appreciating the contention of the Petitioner that there are structural alterations made by the Defendant Nos. 1 and 2 to the suit premises and then same have been effected with permission of the Plaintiff. It is further submitted that, the alterations made by the Respondents/Defendants are within the knowledge and also with permission of the Petitioner/Plaintiff. It is further submitted that, the suit premises were sublet to Respondent No. 2 by the Respondent No. 1 that ground is also not considered by the Courts below. The learned Counsel further invited my attention to the grounds taken in the petition and submitted that, this petition deserves to be allowed.

5. I have given due consideration to the submission of the Petitioner. The Civil Judge Junior Division, Bhusawal framed as many as six issues for his determination/consideration. The issue No. 2 i.e. does Plaintiff prove that the Defendant No. 1 had sublet the suit premises to Defendant No. 2, has been answered in the negative. While answering the said issue in negative, the Court held that the Defendant No. 2 is the brother of the Defendant No. 1. He resided with the Defendant No. 1. It has been admitted by P.W. 2/Ananda that the father of the Defendants and their mother were residing with the original tenant named Banaji. It is further admitted that, the Defendants and their mother were residing with said Banaji, when said Banaji died in the suit premises. It is further admitted that, the Defendants are residing in the suit premises since before he had occupied the tenement in the suit house. In addition to above statement it has been further noticed that the Plaintiff has not specifically denied the aforementioned facts in his cross examination at Exhibit 29. Therefore, the Court negated the contentions of the Petitioner that the premises are sublet by the Defendant No. 1 to the Defendant No. 2.

6. The another issue was framed being issue No. 3 i.e. does the Plaintiff prove that the Defendant No. 1 had made permanent structural alterations in the suit premises without his permission and thereby caused damages of Rs. 500/? Upon appreciation of the evidence brought on record in para 15, 16 and following paragraphs the Court held that the southern wall of the suit premises was of mud and wood. It was essential for the Defendants to erect a pillar for giving support to the roof of its premises. Admittedly, this pillar had been erected by the Defendants looking to the facts of the case and in view of admission of Plaintiff that said wall was of mud and wood, it was necessary to erect the said pillar in order to keep the suit premises in good condition. Therefore, the Court held that, there was no any alteration in permanent structure. It is not in dispute that for construction of the said wall the Plaintiff i.e. Petitioner herein had sought permission of the Municipal Council. Therefore, the Trial Court concluded that, there was no any permanent alteration to the structure of the suit premises. Same findings are confirmed by the lower Appellate Court. I have given careful perusal to the impugned judgments and orders and also material brought on record and I do not find any perversity in the findings recorded by the Courts below. The writ petition stands dismissed. The rule stands discharged.