

(2011) 03 GUJ CK 0113

In the Gujarat High Court

Case No : Civil Revision Application No. 416 of 1998

Rammurat Mahadev

APPELLANT

Vs

Laljibhai Baburam Soni and Others

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29(2)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 03 GUJ CK 0113

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : D.P. Kinariwala, for the Appellant; Daxesh T. Dave, for the Respondent

Judgement

Rajesh H. Shukla, J.—The present revision application has been filed by the Petitioner-original Defendant No. 1 u/s 100 of the Code of CPC read with Section 29(2) of the Bombay Rent Act for the prayer that the judgment and order passed in Civil Appeal No. 36/95 by the Appellate Bench of the Small Causes Court, Ahmedabad, confirming the judgment and order passed by the Small Causes Court, Ahmedabad, in H.R.P. Suit No. 3415/87 may be quashed and set aside on the grounds set out in the memo of the revision application

2. It is contended, inter alia, that both the courts below have failed to appreciate the evidence as well as the documents on record. It has also been contended that both the courts below have committed an error in appreciating the evidence regarding subletting while passing the decree u/s 13(1)(e) which has been confirmed by the Appellate Bench. It is also contended that both the courts below have failed to consider that if it was a case of non-use of the premises, then, the decree u/s 13(1)(e) could not have been passed and therefore the present revision application has been filed.

3. Learned advocate Mr. Kinariwala referred to the papers and the judgments of both the court below and tried to submit that the findings are inconsistent

inasmuch as on one hand the say of the Petitioner-original Defendant No. 1 with regard to non-use has not been accepted and the decree has been passed u/s 13(1)(e) regarding subletting. Learned advocate Mr. Kinariwala submitted that the courts below have failed to appreciate that before the decree u/s 13(1)(e) could be passed on the ground of subletting, necessary ingredients are required to be established, that is, it must be shown that the tenant has handed over the exclusive possession to the third person without consent of the landlord. He submitted that in the facts of the present case, there is no such evidence of handing over of exclusive possession in favour of the sub-tenant. Learned advocate Mr. Kinariwala further submitted that as Defendant Nos. 1 & 2 are in relation and when it was specifically contended that wife of Defendant No. 2 is the niece of Defendant No. 1, the Petitioner herein, it would not be covered by subletting. However, the courts below have failed to appreciate this aspect.

4. Learned advocate Mr. Kinariwala referred to the judgment of the Appellate Bench of the Small Causes Court in Civil Appeal No. 36/95 and submitted that it is observed that no evidence has been produced to show that he resides in the suit premises "throughout", meaning thereby there is no evidence that throughout the present Petitioner-original Defendant No. 1 has been residing there. He emphasised the word "throughout" and submitted that what is necessary is that there could be divesting of exclusive possession by the tenant in favour of the sub-tenant which is not the case when the word used is "throughout" to suggest that for some time he was occupying. Learned advocate Mr. Kinariwala, therefore, submitted that the ingredients cannot be said to have been fulfilled for the decree on the ground of subletting.

5. He has also referred to and relied upon the judgment of the Hon'ble Apex Court in the case of Dipak Banerjee Vs. Lilabati Chakraborty, and pointedly referred to Para 13 in support of his submission.

6. No one has appeared for the Respondents.

7. Though the submissions have been made by learned advocate Mr. Kinariwala, it is required to be considered whether the present application can be entertained in exercise of provisional jurisdiction.

8. There is no doubt that the revision is also u/s 29(2) of the Bombay Rent Act. However, the scope and ambit of exercise of provisional jurisdiction is very limited as observed by the Hon'ble Apex Court in a judgment in the case of Patel Valmik Himatlal and Others Vs. Patel Mohanlal Muljibhai (Dead) Through L.Rs., where it has been clearly laid down that it should not be equated with the appellate powers. The findings arrived at by both the courts below on facts on appreciation of evidence does not call for any interference in exercise of the provisional jurisdiction.

9. At the same time, as the application is also u/s 29(2) of the Rent Act, the High Court can interfere in order to satisfy itself that the judgment of the lower appellate court is according to law and to verify that no error has been

committed which goes to the root of the matter like applying wrong principles of law and/or in construing the provisions of law or the document. As there is no such issue involved, the only issue which is required to be considered is subletting.

10. Both the courts below have given the findings. It is required to be appreciated that in the judgment of the trial court in HRP Suit No. 3415/87 the defiance was sought to be put up that the contention about the sub-tenancy would not be attracted as Defendant No. 2 was related for which discussion has also been made in the judgment of the trial court when specific defiance was sought to be taken with regard to the adoption without producing the adoption deed. Thus, on appreciation of evidence such contention about the adoption has not been believed in the absence of adoption deed. However, in the appeal before the Appellate Bench of the Small Causes Court a new defiance was put up which has been discussed in Para 9 that the wife of Defendant No. 2 (sub-tenant), is the niece of Defendant No. 1 original tenant, the Petitioner herein, and that has also been negative on appreciation of evidence like the ration card that if she was residing with Respondent No. 1-tenant from childhood her name would have figured in the ration card.

11. There has been a discussion with regard to the fact that the Petitioner original Defendant No. 1 has gone to native since many years and therefore merely because the word "throughout" has been used to suggest that it has to be occupied by the tenant cannot be a ground to discard other evidence. On the contrary, it only suggests that it has not been occupied by the tenant.

12. Another facet of the argument with regard to non-use and some discrepancy is also not much relevant in light of the concurrent finding of facts given by both the courts below. Therefore, considering the limited scope of provisional jurisdiction as discussed above and when there is no material error resulting in miscarriage of justice, the present revision application cannot be entertained and deserves to be rejected and accordingly stands rejected. No order as to costs. Rule is discharged. Interim relief stands vacated.