
(2013) 07 BOM CK 0048

In the Bombay High Court

Case No : Civil Revision Application No. 598 of 2012

Rite Choice Trading Company

APPELLANT

Vs

Vikram Govind Rao and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2013) 6 ALLMR 251 : (2013) 6 MhLj 955

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : Rahul Hingmire instructed by Hariani and Co, for the Appellant; P.K. Dhakephalkar , Ms. Neha Palshikar-Bhide for Respondent No. 1 and Mr. Amit Kumar instructed by . Almt Legal for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—The petitioner is the original defendant No. 5. Respondent No. 1 is the original plaintiff, who has filed the Suit for multifarious reliefs. The present petitioner filed an application u/s 9A of the CPC for framing the preliminary issue about jurisdiction. The trial Court framed the preliminary issue of jurisdiction and decided it. The trial Court held that the jurisdiction of the Court is not barred in view of the provisions of the Maharashtra Rent Control Act Aggrieved thereby, the defendant No. 5 has filed the present Revision. Mr. Hingmire, learned Counsel for the petitioner canvassed the following propositions:

a. The prayers made in the Suit are such, which could be considered and granted only by the Court as contemplated under the Provincial Small Cause Courts Act or under the Maharashtra Rent Control Act. The dispute is between the lessor and lessee and/or landlord and tenant. In view of the provisions of the Maharashtra Rent Control Act and the Provincial Small Cause Courts Act, the jurisdiction to try the said dispute would only vest with the Court as contemplated under the Presidency Small Cause Courts Act.

b. The learned Counsel further contends that it is the substance of the pleading

that is required to be considered. Upon a plain reading of the plaint, it would disclose that the plaintiff has approached the Court in the capacity of the lessee and therefore, those parts of the prayer and the pleadings with regard to the relationship of the lessor and lessee and/or landlord and tenant cannot be tried by the Civil Court.

c. The learned Counsel further contends that the Court could not have dealt with the Suit involving composite prayers. The same would not be within the jurisdiction of the Court. In fact, such Suit was not maintainable. The learned Counsel relies on the judgment of the Gujarat High Court in a case of Govindbhai Vs. New Shorrock Mills, Nadiad reported in AIR 1984 Gujarat 182 and the judgment of the learned Single Judge of the Gujarat High Court in a case of Marwadi Punamji Motiji Vs. Mohamad Siddique Musabhai Shaikh reported in AIR 1993 Gujarat 168 so also the judgment of the learned Single Judge of this Court in a case of Rafiuddin Nuruddin Musalman Vs. Abduyl Karim Abdul Reheman and Others, .

d. The learned Counsel further submits that claiming relief with regard to the instrument so also with regard to the status as a lessee could not be tried in one and the same Suit, and that too, before the Civil Court. When the part of the relief is outside the jurisdiction of the Court, such Suit is not tenable. The learned Counsel relies on the judgment of the learned Single Judge of this Court in a case of Mrs. Shantabai Yashwant Kothare and Others Vs. Shri Shankar (since through legal heirs and representatives Parshuram Naik deceased, represented Smt. Prabhavati Shankar Naik, Parshuram Shankar Naik, Chandrakant Shankar Naik and Hemant Shankar Naik), .

e. The learned Counsel submits that upon reading the plaint in toto, it is manifest that the Civil Court does not have the jurisdiction to try and entertain the Suit. Some of the reliefs claimed also cannot be granted by the Civil Court as the same are within the exclusive jurisdiction of the Rent Court.

2. Mr. Dhakephalkar, learned Senior Counsel for the respondent No. 1-plaintiff supports the order and submits that all Civil Courts have got jurisdiction unless expressly or impliedly barred. According to the learned Senior Counsel, the relief with regard to the reconstruction so also with regard to the declaration about the transaction cannot be granted by the Court established under the Maharashtra Rent Control Act or the Provincial Small Cause Courts Act. Such a relief is outside the purview of the jurisdiction of the Civil Court.

3. According to the learned Senior Counsel, if the totality of the plaint is read then it is a dispute basically between the partners of the firm and not a dispute between the landlord and the tenant. The relief is sought against the partners of the firm so also the action taken by the partners of the firm. Such a relief being outside the purview of the Rent Court was perfectly maintainable before the Civil Court. The learned Senior Counsel relies on the judgment of the learned Single Judge of this Court in a case of Bochrhaj Factories Pvt. Ltd. Vs. Smt. Damyanti

reported in 1977 U.C.R. (Bom.) 353 so also the judgment of the Division Bench of this Court in a case of Madhavprasad Kalkaprasad Vs. Indirabai Chandavarkar and Others, and the judgment of the learned Single Judge of this Court in a case of Purshottam Visindas Raheja Vs. Life Insurance Corporation of India and Others, .

4. The learned Senior Counsel also harped on the judgment of the learned Single Judge of this Court in the case of Inderjit Sohanlal Gulati Vs. M.P. Gulati and others reported in All India Rent Control Journal 1989 (1) page 496 to contend that when the dispute is with regard to the personal right of the partner or asset of the partner and the landlord is impleaded as party defendant then such a Suit would be maintainable before the Civil Court and would not be maintainable before the Court under the Rent Act.

5. With the assistance of the learned Counsel, I have gone through the pleadings and the order. There need not be a debate with the proposition that all Civil Courts have jurisdiction unless their jurisdiction is expressly or impliedly barred. There also cannot be a debate with the proposition that it is the substance of the pleading which has to be considered.

6. Before I proceed to consider the arguments advanced by the learned Senior Counsel appearing for the respective parties, it would be appropriate to refer to the relevant pleadings in the plaint.

By the present Suit, the plaintiff has challenged the said alleged transactions of 05.09.2006 and 01.09.2006 being illegal, void ab initio and not binding on the plaintiff.

7. The plaint proceeds to give the details of the partnership being reconstituted from time to time and the rights of the firm and partners in the property leased.

7. The plaintiff states that the defendant Nos. 2 and 3 being the partners are required to carry out the business of the firm to the best advantage of the firm and all the partners and the policy decisions are to be taken by all the partners according to the said partnership deed i.e. as per the contract as well as according to the provisions of the Indian Partnership Act, 1932. Plaintiff states that according to the said partnership deed and even according to law no partner is entitled to assign, transfer his share in the partnership business to any third party nor any party is entitled to sell, surrender or otherwise transfer either the leasehold rights or any immovable property or the assets of the partnership firm to any person without the prior written consent of all the partners.

8. The plaintiff states that he learned from the news items published from Pune that the defendant Nos. 1 to 3 in collusion with each other have transferred the leasehold rights either by surrender or otherwise in favour of the defendant No. 5 in joining hands with the defendant No. 4.

Admittedly as on today the firm is in existence i.e. same has not been dissolved, and therefore, they alone have no any right to transfer the leasehold rights

wherein the plaintiff is also having 1/3rd undivided share, and therefore, the said transaction is illegal, void ab initio and non-est and the same is not binding on the plaintiff and the plaintiff continues to be a lessee having 1/3rd undivided share in the said leasehold rights. On the basis of the above said facts and rights of the plaintiff, he has issued a notice dated 26.09.2006 to the defendant Nos. 1 to 3 calling upon them to give all the details of the transaction...

The defendants cannot go beyond the partnership deed. Even though losses are not shared by the plaintiff that is not a criteria, and therefore, the plaintiff is a partner and sharing the losses is not a condition precedent for becoming a partner or acquiring the status of a partner, and therefore, the plaintiff is constrained to file the present suit challenging this transaction and cancellation of these documents and for declaration of his right in the immovable property in the form of leasehold rights, hence the present suit. If these documents remain in existence they would cause prejudice to the rights of the plaintiff.

8. Based upon the said pleadings, the plaintiff has claimed following reliefs in the Suit:

a) It may kindly be declared that the plaintiff continues to be a lessee having undivided share to the extent of 1/3rd in the said leasehold rights i.e. assets of the partnership firm;

b) It may also kindly be declared that the alleged transaction dated 5-9-2006 by defendant Nos. 1 to 3 in favour of the defendant No. 5 i.e. surrender of leasehold rights and the alleged transaction between defendant Nos. 4 and 5 regarding the alleged Conveyance dated 1-9-2006 are illegal, null and void ab initio and non-est and not binding on the plaintiff;

c) Both these registered instruments dt. 5.9.2006 and 1.9.2006 alleged to have been executed in favour of defendants may kindly be cancelled by decree of this court and a note to that effect may kindly be sent to the registering authority regarding cancellation of these instruments;

d) It may also kindly be declared that the defendant No. 5 has not acquired any rights in the said leasehold rights or in the property more particularly described in the Schedule and to deal with the said property or carry out any development or construction over the suit property;

e) The defendant No. 5 or any other defendants may kindly be permanently restrained from dealing with the suit property and create any further third party interests in the suit property and be further restrained from carrying out any development and construction over the suit property.

f) Necessary interim reliefs restraining the defendants in terms of prayer clause No. (e) above may kindly be granted during the pendency of the present suit for which a separate application is filed.

g) The defendant Nos. 1 to 3 may kindly be directed by mandatory injunction to

reconstruct with their own funds the demolished building of the original restaurant and bring in the suit property to its original nature and status thereby enabling the plaintiff and defendant Nos. 1 to 3 to continue the said business as before.

9. Even if it is assumed that a particular Act is a complete Code, its operation has to be limited to the purpose for which it was enacted. A provision in the Statute ousting jurisdiction of the Court must receive strict construction. Where the Civil Court's jurisdiction is barred expressly, it must mean that it is confined to the matters connected therewith or covered thereby. The adjudicatory forum provided therein must be competent to resolve the dispute.

10. Jurisdiction of Civil Court is plenary in nature. A casus omissus cannot be supplied by the Courts to oust jurisdiction of Civil Court. Court which cannot give relief claimed for has no jurisdiction to deal with the case.

11. When a special tribunal is created under special Statute, jurisdiction of Civil Court is ousted only in respect of those reliefs which could be granted by special tribunals in special Statute and in other respects, jurisdiction of civil court is not ousted.

12. A plea of bar of jurisdiction of Civil Court must be considered having regard to the contention raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in its entirety. The Court would not be justified in determining the question one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The Court has to consider what in substance and not merely in form, is the nature of the claim made in the Suit and the underlying object in seeking the relief therein.

13. Considering the substance of the pleading, it transpires that the grievance of the plaintiff is against the acts of the other partners entering into transactions with the landlord/owner and the further transactions thereto. It is not a dispute about the rights of tenancy between the landlord and the tenant. The claim of the plaintiff is that being a partner in the firm, he has a right in that asset of the firm, which is leased, and as the transaction is without his consent, he retains his right. The averments in the plaint do not suggest that the dispute is the one contemplated u/s 33 of the Maharashtra Rent Control Act or a dispute, which would be tried in a Court established under the Provincial Small Cause Courts Act. The Suit is also not one of a composite relief as is being sought to be contended. The other reliefs would be consequential to the main relief about the declaration regarding the transaction entered into between the parties, which is without the consent of the plaintiff.

14. The relief of declaration and cancellation with regard to the registered instruments is only within the realm of the Civil Court. Prayer clauses (b) and (c) in the plaint deal with the same. The other reliefs would be the consequences of the finding in respect of prayer clauses (b) and (c). Prayer clause (g) also would

be consequential to the same, that is, a prayer for mandatory injunction.

15. The judgments relied by the learned Counsel for the petitioner are on the premise wherein the composite relief was claimed. In a case of *Mrs. Shantabai Yashwant Kothare and Others Vs. Shri Shankar* (since through legal heirs and representatives Parshuram Naik deceased, represented Smt. Prabhavati Shankar Naik, Parshuram Shankar Naik, Chandrakant Shankar Naik and Hemant Shankar Naik), referred supra, the Suit was filed in respect of the tenanted premises as well as the encroached area. It was held by the Court that the Suit in respect of the encroached area is not maintainable, and as such, a composite Suit would not be tenable. The Court would not have jurisdiction to grant relief in respect of an encroached area. In a case of *Rafiuddin Nuruddin Musalman Vs. Abduyl Karim Abdul Reheman and Others*, referred supra, it was held by the Court that the relationship of the landlord and the tenant was not established, and as such, the Court under the Maharashtra Rent Control Act did not get the jurisdiction. So also in a case of *Govindbhai and Marwadi Punamji Motiji*, referred supra, it was held that when one relief falls outside the provisions of the Maharashtra Rent Control Act then in such a case, the Court does not have the jurisdiction and the said decree would be nullity.

16. The position here is different. The plaintiff is actually agitating his grievance against the partners of the firm. His grievance is that his partners have entered into transaction with the landlord without his consent and seeks declaration that the said transaction is not binding upon him and further seeks the relief of cancellation of the said transaction. All other prayers would be the consequence of the said relief of declaration and cancellation of the instrument.

17. As discussed above, the jurisdiction vis-a-vis the nature of the Suit is to be determined on the basis of the averments in the plaint and not on the basis of defence or the result of the suit on the merits of the claim. Suit for Cancellation of Instrument on the ground that it is void, illegal will generally lie before the Civil Court. The Courts constituted under the Provincial Small Cause Courts Act or Maharashtra Rent Control Act would not be in a position to grant relief with regard to the Cancellation of Instrument. In light of the above, the trial Court has properly considered the said aspect and has rejected the application. I do not find any error committed by the trial Court in passing the impugned order. Civil Revision Application, as such, stands dismissed. However, with no order as to costs.