
(1955) 12 BOM CK 0017

In the Bombay High Court

Case No : Special Civil Application No. 1921 of 1955

R.S. Patil

APPELLANT

Vs

Bombay Revenue Tribunal

RESPONDENT

Date of Decision : 13-12-1955

Acts Referred:

Bombay Tenancy Act, 1939 — Section 25, 25(1)
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : AIR 1956 Bom 758

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : H.B. Datar, for the Appellant; G.R. Madbhavi, for the Respondent

Judgement

Chagla, C.J.—The petitioner, who is the landlord, succeeded both before the Mamlatdar and the Prant Officer in establishing that his tenant the first opponent had committed default in payment of rent for three years 1947-48, 1948-49 and 1949-50 and that he was entitled to an order for eviction. In revision the Revenue Tribunal reversed the decision of the two lower tribunals and dismissed the landlord's application. The landlord has now come before us under Article 227 of the Constitution.

2. Mr. Datar's contention is that the Revenue Tribunal has interfered with the finding of fact. The Revenue Tribunal was conscious of it. The reason why it interfered with that finding is that, according to it, that finding was perverse and if that finding was perverse, undoubtedly the Tribunal had Jurisdiction to interfere with it. In our opinion, the view taken by the Tribunal is fully justified. Both before the Mamlatdar and the Prant Officer the tenant relied on five receipts in order to establish that he had paid rent up to 1947-48. The lease was executed on 10-4-1943 and the rent reserved under the lease was Rs. 450 and the rent was payable in advance.

The first receipt is dated 8-4-1943 which recites that rent in the sum of Rs. 450

has been paid for the year 1943-14 in advance. Then we have subsequent receipts for each year 1944, 1945, 1946 and 1947 and the receipt for the year 1947 is passed on 31-3-1947. Looking to this chronological order it is clear that the tenant has paid rent every year from 1943-44 to 1947-48. If that be the true position, then clearly there is no default so far as the year 1947-48 is concerned. Neither the Mamlatdar nor the Prant Officer seems to have carefully considered this important documentary evidence adduced by the tenant.

As a matter of fact the Prant Officer had even made a mistake as to the date of the final receipt. According to him, the date of the last receipt was July 1947, whereas as we have just pointed out, the date was 31-3-1947. If the fact finding authorities ignored unimpeachable documentary evidence, then the Tribunal was justified saying that the decision was perverse and was indeed no decision at all on facts.

But the error into which, with respect, the Tribunal fell was that having correctly held that the landlord had failed to establish three defaults and, therefore, was not entitled to an order for ejectment it overlooked the provisions of Section 25(1) of the Tenancy Act because according to its own decision two defaults for 1948-49 and 1949-50 were undoubtedly established. If that was the position, then it was incumbent upon the Tribunal to pass the necessary order u/s 25(1) or direct the Mamlatdar to pass such an order.

3. We would, therefore, set aside the order of the Tribunal by which it dismissed the application of the landlord and send the matter back to it to dispose of it according to law. No order as to costs.

4. Order accordingly.