
(1919) 11 BOM CK 0005
In the Bombay High Court
Case No : Suit No. 16305 of 1919

Rustam Sorabji Powwalla

APPELLANT

Vs

Ramchandra Balaji Gaikwar

RESPONDENT

Date of Decision : 20-11-1919

Acts Referred:

Citation : (1920) 22 BOMLR 860 : 57 Ind. Cas. 993

Hon'ble Judges : Norman Macleod, J;Heaton, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—This was a suit filed under Chapter VII of the Presidency Small Cause Courts Act by the three plaintiffs to recover possession of certain premises from the defendant. The first two plaintiffs were the owners of the property, and the landlords of the defendant. They had agreed to give a lease to the 3rd plaintiff for a period of 999 years under which the 3rd plaintiff covenanted to erect certain buildings on the land. The land admittedly, as it stands at present, contains buildings of a very inferior character, and the 3rd plaintiff has undertaken to erect pucca buildings provided with all modern conveniences which undoubtedly will much improve the property, and provide accommodation for more persons than are able to be accommodated in the present buildings.

2. The defendant resisted the suit on the ground that he was protected by Section 9, Clause (2), of Act II of 1918. He contended that the premises must be required by the landlord for the erection of buildings by the landlord only, and not by any third party to whom the landlord may have leased or sold the premises. I do not think that is the proper construction to be placed upon the Act. Otherwise a landlord owning undeveloped property within the limits of the city would be prevented entirely from developing his property, and providing further accommodation for the inhabitants of the city if he had not got the requisite capital for the new buildings. I think it can be said that the landlord has leased his premises admittedly with the object of improving the existing

accommodation by raising new buildings. It is clear that he has required the premises for the erection of buildings. As a matter of fact the point taken by the defendant is purely a technical one, because if the landlord had actually sold his premises, or leased them on a building lease of this nature to a third party, and given possession, it is obvious that the new landlord would be entitled to give notice, and the tenants would not be protected by Section 9, Clause (2) of the Act. But in this case the foundation for any technical objection of that sort disappears, because the third plaintiff, who may be considered as the lessee of the premises under the building lease, is a party to the proceedings. So that since he can be considered as the landlord, and it is quite clear that he requires the premises for the erection of buildings, the present tenants are not protected, unless his conduct is unreasonable.

3. The learned Judge has also referred the following question:- Is the requisition by the landlord reasonable under the circumstances? That is purely a question of fact. The Judge must come to a conclusion on the facts of the case, and it is impossible for us to lay down any general principle which should guide a Judge in coming to a decision on the facts of the case before him whether the conduct of the landlord is reasonable or not. Costs costs in the cause.

Heaton, J.

4. I must assume for the purpose of this reference that the premises are reasonably and bona fide required. That of course is a question of fact which we cannot determine, and which the Small Cause Court Judge must determine. But assuming that it is so, that the premises are reasonably and bona fide required, then we know that they are required for the erection of buildings.

5. The only point that remains is to consider whether the words of Clause (2) of Section 9 of Act II of 1918 require either expressly, or by implication, that the building must be erected by the landlord. It seems to me that this is not expressed in the section, and not implied by the words used. The idea is that a building is to be erected, but I do not think that the words suggest that if a building is erected by some person other than a landlord, under some arrangement with the landlord, as is proposed in this case, that then the landlord is prohibited from requiring the tenant to leave the premises. Therefore, I think, the reference should be answered as proposed.