
(2011) 05 BOM CK 0006
In the Bombay High Court
Case No : Second Appeal No. 148 of 1992

Sayed Ismail

APPELLANT

Vs

Imambee and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Registration Act, 1908 — Section 17, 17(1)(d), 49

Citation : (2011) 05 BOM CK 0006

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : K.G. Khader, for the Appellant; V.C. Solshe, advocate for Respondent Nos. 2(b) to 2(f), 3 to 11, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Ahmedsaheb (D) by L.Rs. and Others Vs. Sayed Ismail, AIR 2012 SC 3320 : (2012) 6 JT 581 : (2012) 4 RCR(Civil) 468 : (2012) 2 RCR(Rent) 283 : (2012) 6 SCALE 505 : (2012) 8 SCC 516 : (2012) AIRSCW 4287

R.M. Borde, J.—All these appeals are presented by the tenant raising exception to the respective judgments and decree passed in respect of recovery of arrears of rent. In all these appeals, three different suits were instituted by the respondents / landlords claiming recovery of arrears of rent receivable from the tenant / appellants in all the appeals. So far as Second Appeal no. 148/1992 is concerned, respondents / landlord presented Regular Civil Suit no. 167/1974 claiming recovery of rent amounting to Rs. 3150.68 ps. Recovery of rent is claimed for a period preceding three years of presentation of the suit. It is the case of the plaintiffs / respondents herein that the shop premises were let out to the appellant /original defendant / tenant on 19-10-1971, initially for a period of about 1 year on monthly rent of Rs. 83.32 ps. Rent note was executed on the same day by plaintiff Imambi w/o Sk. mahtab Saheb. It is contended by landlord that the tenant did not pay the amount of rent for a period of one year i.e. from

Diwali of the year 1971 to Diwali of the next year and also for subsequent two years. Yearly rent was prescribed since 26-11-1973 at Rs. 1151/-. Tenant did not pay yearly rent for the year 1973-1974 also. It is contended that there were documents in the form of rent notes executed by the tenant which are placed on record at exh. 68 and 69. Landlords thus claim that tenant has fallen in arrears of payment of rent for an amount of Rs. 3150.68 ps. Appellant herein / original defendant presented written statement and controverted the contentions raised by plaintiffs / landlords. It is the contention of the tenant that the shop premises were owned by defendant no. 8 Abdul s/o mehtab and he occupied the premises as a tenant of Abdul Rehman and the yearly rent fixed was Rs. 800/-. It is his contention that he was inducted as tenant in the year 1968 during Diwali festival. He further contends that he made improvements in the property and a sum of Rs. 5,000/- which was required for repairs was agreed to be adjusted towards arrears of rent. It is thus contended by the tenant that he is not liable to pay amount to the plaintiffs / landlords as contended by them.

Initially, the suit presented by the plaintiff was dismissed on 13-7-1981 against which the landlords preferred appeal which came to be allowed and the matter was remitted back to the trial court. On remand of the matter, trial court passed decree in favour of the landlords on 31-7-1985. Tenant preferred appeal raising exception to the decree being Regular Civil Appeal no. 189/1985 which came to be dismissed by the Additional District Judge, Latur on 27-8-1991. As such Second Appeal no. 148/1992 is presented by the tenant.

Second Appeal no. 149/1992 is also in respect of recovery of arrears of rent. It came to be presented by the tenant raising exception to the concurrent judgments recorded by the courts below. Landlords instituted suit being Regular Civil Suit 211/1977 claiming recovery of rent of Rs. 3453/- for a period between 13-11-1974 to 13-11-1977. The suit presented by the plaintiffs / landlords was decreed on 21-4-1986. Appeal was presented by the tenant being Regular Civil Appeal no. 87/1986 which came to be dismissed on 27-8-1991. As such, Second Appeal no. 149/1992 came to be presented by the tenant.

So far as Second Appeal no. 150/1992 is concerned, it is also in respect of recovery of rent. It came to be presented by the tenant raising exception to the concurrent judgments recorded by the courts below. Landlords instituted suit being Regular Civil Suit no. 240/1980 claiming recovery of rent of Rs. 3,453/- for a period between 14-11-1977 to 13-11-1980/Suit presented by the plaintiffs / landlords was decreed on 21-4-1986. Appeal presented by the tenant being Regular Civil Appeal no. 861/1986 came to be dismissed on 27-8-1981. As such, Second Appeal no. 150/1992 came to be presented by the tenant.

In Second Appeal nos. 149/1992 and 150/1992 challenge is to the decree in respect of recovery of rent and the claim presented by the plaintiffs is based on lease deed executed by tenant on 26-10-1973 thereby agreeing to pay yearly rent of Rs. 1151/-.

2. Mr. Kadar, learned counsel appearing for the appellants in all the three appeals contended that the courts below have committed a serious error in placing reliance on the un-registered lease deed / rent note and proceeded to pass a decree in respect of recovery of amount against the tenant. It is the contention of the appellant that document exh. 69 i.e. lease deed dt. 26-10-1973 is compulsorily registrable and in view of mandate of section 49 of the Registration Act, the document which is required to be registered, if not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. It is the contention of the appellant that the courts below have not taken into consideration the provisions of the Registration Act as well as section 107 of Transfer of Property Act, 1982 and proceeded to pass decree against the tenant. It is contended that part of the claim in Regular Civil Suit no. 167/1974 i.e. in respect of recovery of rent amount for a period between 1971-1973 is based on rent note exh. 68 which prescribes rate of rent at Rs. 83.32 ps. Landlord in the plaint although claimed rent at Rs. 83.32 ps per month for the aforesaid period, witness no. 1 for the plaintiff, Mohd. Ismail, in his deposition has claimed that the shop was let out for yearly rent of Rs. 1100/-. Trial court has recorded finding in the judgment that if the arithmetic calculation in respect of yearly rent is considered, it would come to Rs. 75/- per month and the court has further proceeded to accept the case put up by the plaintiff in respect of monthly rent of Rs. 83,32 ps. Thus, there is discrepancy in the pleadings and the evidence in respect of monthly rent for the years 1971-1972 and 1972-1973. So far as rent payable for the year 1973-1974 is concerned, according to the plaintiffs / landlords, the claim is based on rent note at exh. 69 executed on 26-10-1973. According to learned counsel for the appellant, rent note in respect of payment of yearly rent for an amount more than Rs. 1,000/- is required to be registered in view of provisions of section 107 of Transfer of Property Act. In the instant matter, rent agreement being not as prescribed by section 107 of the Transfer of Property Act or section 17 of the Registration Act, it is not admissible in evidence. It is thus contended that the courts below have committed an error in granting the decree in respect of recovery of rent in favour of the landlords.

3. Learned counsel for the respondents, however, has supported the judgments and decree passed by the courts below in all the matters and contended that concurrent findings recorded by the courts below based on appreciation of facts need not be interfered with in the second appeal. It is the contention of the respondents that although the document exh. 69 is not registered the same can be used for collateral purpose and thus, the courts below were justified in granting decree in favour of the landlords.

4. On consideration of the rival contentions raised by the parties, following substantial questions of law arise for consideration in all the appeals :-

1. Whether the courts below were justified in granting decree in favour of the landlords in respect of recovery of rent amount although the claim was founded on exh. 69, an unregistered lease deed allegedly executed by the tenant in

favour of the landlords ?

2. Whether a lease of immovable property, from year to year or for a term exceeding one year reserving yearly rent required to be made by registered instrument is so made and if the claim is based on an unregistered instrument, whether the courts below were justified in allowing the claim based on such unregistered instrument ?

3. Whether it was permissible for the courts below to receive as evidence of any transaction based on document which is not registered one, but however, is required by virtue of section 17 of the Registration Act to be compulsorily registered and whether the claim founded on such document can be allowed ?

5. It is not disputed that the claim raised by the plaintiff for recovery of rent which is subject matter of Regular Civil Suit no. 211/1971 (S.A. No. 149/1992) and Regular Civil Suit no. 240/1980 (S.A. No. 150/1992) is exclusively based on the rent agreement allegedly executed on 26-10-1973 marked as exh. 69. So far as the claim raised in Regular Civil Suit no. 167/1974 (S.A. No. 148/92) is concerned, part of the claim for a period between 1973-1974 is founded on the document at exh. 69 whereas part of the claim for the period between 1971-1973 is founded on document at exh. 68. As stated above, both the documents are not registered. There is also discrepancy in evidence as regards the monthly rent payable by the tenant. In the pleadings, landlord has claimed rent for a period between 1971-1973 in Regular Civil Suit no. 167/1974 as Rs. 83.32 ps whereas in evidence he has claimed rent at Rs. 1100/- per year. Trial court has also not given a definite and logical finding as regards the rate of rent payable during the period from 1971-1973. It is recorded in paragraph no. 14 of the judgment of the trial court that plaintiff no. 1 Imambbee has deposed that rent for the first year was fixed at Rs. 900/- per year. The landlord has failed to prove the rate of rent being Rs. 83.32 ps. per month for the period between 1971-1973. Trial court has recorded in the judgment that arithmetic calculation of rent of Rs. 900/- per year shall come to Rs. 75/- per month which is near to Rs. 83.32 ps and as such proceeded to accept the contention of the tenant. There is no logic in the reasoning adopted by the trial court for arriving at rate of rent for the aforesaid period. Rate of rent at Rs. 83.32 ps was prevalent only for a period between 1971-1973. Further claim since 26-10-1973 onwards which is subject matter of the other two suits i.e. RCS No. 211/77 and 240/80 is also founded on a document at exh. 69 which prescribes yearly rent at Rs. 1150/-.

6. Section 107 of the Transfer of Property Act provides thus :

107 Leases how made :-

A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

Section 17(1)(d) of the Registration Act provides for the documents of which registration is compulsory. It reads thus :-

17 Documents of which registration is compulsory :-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

Section 49 of the Registration Act provides for the consequences of non-registration of the document which requires registration as provided u/s 17 of the Act. It reads thus :-

49. Effect of non-registration of documents required to be registered:-

No document required by section 17 [or by any provision of the Transfer of Property act, 1882] to be registered shall :-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or unless it has been registered :

[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, (***) or as evidence of any collateral transaction not required to be effected by registered instrument.]

It is thus clear that the document at exh. 69 is in respect of lease of immovable property from year to year needs to be registered. The document is also compulsorily registrable as provided u/s 17 of the Registration Act. As a result of failure to register the document, same cannot be received as evidence of any transaction affecting such property. The courts below have fallen in error in

accepting the document at exh. 69 in evidence and granting decree in favour of the plaintiffs in respect of recovery of rent. Thus, the document which needs to be registered as provided u/s 17 of the Registration Act, if not registered, consequently, the same cannot be received in evidence and it was not open for the trial court to pass a decree in favour of the plaintiffs in respect of claim which was founded on such inadmissible document. Reference can be made to a judgment in the matter of Anthony Vs. K.C. Ittoop and Sons and Others, . After quoting the relevant provisions the Apex Court in paragraph no. 11 of the judgment has observed as below :

11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay, Satish Chand Makhan v. Govardhan Das Byas and Bajaj Auto Ltd. v. Behari Lal Kohli.)

7. So far as the contention of the defendant that the document can be used for collateral purpose is concerned, there cannot be any dual opinion about it. However, in the instant matter, the claim put forth by the plaintiffs in respect of recovery of rent is founded on the document at exh. 69 which is unregistered one, therefore, the courts below were precluded from granting such claim based on unregistered document which is inadmissible in evidence in view of section 49 of the Registration Act. Thus, for the reasons recorded above, appeals presented by the appellant need to be allowed and judgment and decree passed in the respective appeals by the courts below need to be quashed and set aside. Resultantly, all the three suits presented by the plaintiffs claiming recovery of arrears of rent shall stand dismissed. In the facts and circumstances of all the three appeals, there shall be no order as to costs.