

(1962) 02 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Revision Application No. 226 of 1960

Shah Kantilal Manilal and Another

APPELLANT

Vs

Kothari Gopaldas Bapabhai

RESPONDENT

Date of Decision : 27-02-1962

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(1)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1963 Guj 143 : (1963) GLR 152

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : K.T. Pathak, for the Appellant; I.G. Pasawala, for N.G. Modh and K.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Raju, J.—The second Joint Civil Judge, Junior Division, Ahmedabad, decreed Civil Suit No. 343 of 1957 by the landlord for possession of the premises leased to the tenant on the ground that the tenant had built a house for himself after coming into operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which will hereinafter be referred to as the Act, and also on the ground that the tenant had sub-let the premises. The suit had been filed both against the tenant as well as against the alleged sub-tenant. In appeal, the appellate Court confirmed the decree for possession on the first ground but as regards the second ground relating to the alleged sub-tenancy, it gave no finding, as it felt that it was not necessary in view of the fact that the appellate Court was confirming the decree of the first Court on the first ground.

2. In revision, the tenant and the alleged subtenant contended that the appellate Court should have given a finding regarding the sub-tenancy. It is also contended that after the date of the filing of the revision application on 27-2-59, an Ordinance was passed on 21-5-59 according to which all "sub-tenancies which came into being before the date of the Ordinance, were not to be used as a

ground for obtaining possession. It is, therefore, contended that in view of this Ordinance which was passed after the revision application had been filed it should be held that there was a sub-tenancy notwithstanding the fact that the alleged sub-tenancy was denied till the date of the Ordinance. It is contended that as the Ordinance was passed before the date on which this revision application is being decided, the ordinance should be applied by the revising Court, and for this proposition reliance is placed on *Parwatibai Vasudeo v. Shridhar*, 60 Bom LR 1175 at p. 1181.

3. As regards the first contention that the appellate Court should have given a finding regarding the sub-tenancy, the High Court will not interfere in revision merely because a finding, which the appellate Court rightly thought was unnecessary, was not given. u/s 13(1)(1) of the Act, a landlord would be entitled to possession if after coming into operation of the Act the tenant had built a suitable residence. On this point, both the Courts have agreed that the landlord is entitled to possession. It was therefore not necessary for the appellate Court to consider whether the landlord was entitled to possession on another ground also. The omission to give a finding on the alleged subtenancy is therefore not a matter to be interfered with in revision.

4. As regards the second contention that this Court, in revision, should apply the Ordinance which came into force on 21-5-59, and that this Court should hold that both the tenant and the alleged sub-tenant denied the alleged sub-tenancy in the proceedings both at the trial and in appeal. It is contended that so far as the tenant is concerned, Sub-clause (1) of Section 13(1) of the Act would apply, but so far as the sub-tenant is concerned, this Clause (1) has no application, because the subtenant had not built a house of his own residence.

5. Section 13 of the Act enumerates the circumstances under which a landlord would be entitled to recover possession of any premises, and one of these circumstances is that the tenant has, after coming into operation of the Act, built a suitable residence. Another circumstance is found in Clause (e) and this is that the tenant has, since the coming into operation of the Act sub-let whole or part of the premises or assigned or transferred in any other manner his interest therein. The sub-tenancy was alleged by the landlord-plaintiff and has been denied by both the tenant as well as the alleged sub-tenant, who were parties to the suit. Even in the memo of the revision application in ground No. (k) it was contended that the appellate Court ought to have held that defendant No. 1 has not sub-let the premises to defendant No. 2.

The Memo of the revision application was filed on behalf of both the applicants, namely the tenant and the alleged sub-tenant. After the revision application was filed and admitted, an Ordinance was passed on 21-5-59, and according to this Ordinance, a landlord would not be entitled to possession on the ground of sub-tenancy if the sub-tenancy was before the date of the Ordinance. It is, therefore, contended that the law contained in that Ordinance should be applied by this Court in revisions so far as the sub-tenant is concerned. If an Act or Ordinance,

which is retrospective in nature is passed, that law has to be applied to all pending proceedings. But, in the case of a revision u/s 115, C. P. Code, the question before the revising Court is whether the subordinate Court (a) has exercised a jurisdiction not vested in it by law, or (b) has failed to exercise a jurisdiction so vested, or (c) has acted in the exercise of its jurisdiction illegally or with material irregularity.

6. When the appellate Court passed its judgment, the Ordinance dated 21-5-59 had not been passed and the High Court cannot now say that the appellate Court should have applied the law, which is contained in the Ordinance, which was passed subsequent to the judgment in appeal. It cannot, therefore, be said that the appellate Court had acted illegally or with material irregularity in not considering the Ordinance which was not in existence at the time when the appellate Court delivered its judgment and which was passed about six months later.

7. It is, however, contended by the learned counsel for the applicants that even when a revision application is pending, the High Court, in revision, should apply the law, which prevailed on the date on which the revision application is being decided, and reliance is placed on 60 Bom LR 1175 . In that judgment, a reference was made to an unreported judgment of Chagla C. J., in *Sunderji Vithaldas v. C. L. Seshan*, Civil Revision Application No. 16 of 1949, D/- 1-4-1949 (Bom). In that case, the Small Causes Court Judge of Bombay held that the landlord required the premises reasonably and bona fide. But on a consideration of the question of balance of convenience he dismissed the plaintiff-landlord's suit. After that judgment was delivered by the Small Causes Court Judge, a Full Bench of the Bombay High Court held that the new Rent Act which applied the principle of balance of convenience was not applicable to the case which had been filed in the Small Causes Court on the date when the old Act was in force. In this view of the matter, the original plaintiff would have been entitled to a decree for possession. The landlord went in revision, and after the revision application was admitted, the Government of Bombay passed an Ordinance which provided that no order or decree passed between the 13th day of February 1948 and the date on which the Ordinance came into force, namely 3rd February, 1949, could be questioned only on the ground that the suit or proceedings should have been decided and disposed of in accordance with the provisions of the new Act and not in accordance with the provisions of the old Act or vice versa. But after this Ordinance, it was open to the plaintiff-landlord to contend that the Small Causes Court Judge should have applied the old Act and not the new Act. But in view of the Ordinance dated 3-2-49, the learned Chief Justice observed that what he had to consider was what the law was, not when the revision application was admitted but what the law was on the day when the revision application was being decided by the High Court. These observations would prima facie seem to support the view of the learned counsel for the applicants, but these observations refer to a peculiar Ordinance which was passed on February 3, 1949. That Ordinance provided that no order or decree could be

questioned only on the ground that the suit or proceedings should have been decided and disposed of in accordance with the provisions of the new Act and not in accordance with the provisions of the old Act. The Ordinance, therefore, restricted the power of any party to challenge the decree or order passed. The Ordinance did not allow the contention to be raised. The question whether the contention was sound or not was not considered by the learned Chief Justice of the Bombay High Court. The instant case is of a different type. In the instant case, the Ordinance was passed after the appellate Court declared its judgment and before the matter was decided by the High Court in revision. It is true that in the Bombay case the Ordinance was passed before the matter was decided by the High Court in revision. But the Ordinance in the instant case deals with substantive law, whereas the Ordinance in the Bombay case did not allow an order or decree passed previously to be challenged, and, therefore, such an order or decree could not be challenged even in revision before the High Court, and, therefore, the Bombay High Court in revision rightly held that it was not open to the Court to entertain a challenge with regard to a decree or order passed, having regard to the Ordinance passed. And it is in that context that the learned Chief Justice observed that he had to consider what the law was when the revision application before him was being decided. These observations had to be made in view of the nature of the Ordinance. But these observations cannot be extended so as to take within their scope the application of new substantive law to redecide the case. In a revision application u/s 115, Civil Pro. Code, the High Court does not decide the rights of the parties. It considers the question whether a subordinate Court had acted illegally or with material irregularity when it passed its judgment, and for this purpose the High Court must only consider the law as it stood on the date when the subordinate Court had decided the matter. The High Court for this purpose cannot consider what the law was on the date when the revision was being decided.

8. The learned counsel for the applicant also relies on *M. M. Kathanar V. K. E. Kathanar* AIR 1954 TC 178 , where it was observed that the limitations which govern the exercise of the revisional jurisdiction are those in force at the time when such a jurisdiction is attempted to be exercised and not those that were in force at the time when the exercise of that jurisdiction was invited by the presentation of the revision petition or at the time when the order sought to be revised was passed. When a subordinate Court passes an order and after that order is passed, a law is passed which has an effect on the powers of the High Court in revision, that law must be considered by the High Court in revision, because it affects the High Court's powers in revision. But, if after the subordinate Court has passed its order, a law is passed, which affects the right of the parties without having any effect on the powers of the High Court in general, then such a law should not be considered by the High Court in revision, because u/s 115, C. P. C., the High Court has to decide in revision whether the subordinate Court has done something irregular or illegal when it passed an order. If the subordinate Court has rightly applied the law, which was in force at

that time, such an order cannot be interfered with in revision notwithstanding the fact that subsequently the law affecting the parties has been changed. Such interference may be allowed in appeal, but not in revision, and in the case decided by the Travancore-Cochin High Court the change in law altered the powers of the High Court in revision. The same remarks apply to the Ordinance which was under consideration in C. R. A. No. 16 of 1949 of the Bombay High Court. That Ordinance prevented all Courts from doing certain things, and therefore also applied to the High Court in revision. Such an Ordinance had to be considered by the High Court in revision notwithstanding the fact that that Ordinance was passed after the subordinate Court had passed its order. But the, change in the instant case is not one affecting the powers of the High Court. The change in law, namely Ordinance No. 3/59 dated 21-5-59 validated subtenancies prior to 21-5-1959, provided the subtenants were in possession. This law changed the law affecting the parties and had no effect on the powers of the High Court in revision, and in order to decide whether the subordinate Court had acted with illegality we have to consider the law as it stood at the time when the subordinate Court passed its order. The subordinate Court was right in passing the order, because on the date when it passed the order, the Ordinance was not in force, and therefore, the order of the subordinate Court cannot be interfered with in revision.

9. Both the contentions of the learned counsel for the applicants are, therefore, rejected. The revision application is dismissed with costs. Stay is vacated.