
(1949) 03 BOM CK 0036

In the Bombay High Court

Case No : O.C.J. Appeal No. 78 of 1948 and O.C.J. Suit No. 963 of 1945

Shivji Bhara and Co.

APPELLANT

Vs

Kanji Vasanji

RESPONDENT

Date of Decision : 04-03-1949

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 50

Citation : AIR 1949 Bom 337 : (1949) 51 BOMLR 515

Hon'ble Judges : M.C. Chagla, C.J.;Coyajee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.C. Chagla, C.J.—The only question that arises in this appeal is whether the suit filed by the plaintiffs is maintainable in this Court or it should be transferred to the Court of Small Causes under the provisions of Bombay Act LVII of 1947. It would appear that the plaintiffs were the tenants of the defendants who are trustees of a charitable trust in respect of three godowns for some time prior to the explosion that took place in Bombay on April 14, 1944. In the explosion two of the godowns were destroyed. The plaintiffs vacated the third godown as it was required by the defendants for storing certain articles. Thereafter the plaintiffs wanted to resume possession of the third godown, and according to the plaintiffs the defendants agreed to give possession of the third godown provided the plaintiffs not only paid the rent of Rs. 125 which was the proper rent, but also a pugree aggregating to Rs. 5,200 worked out on the basis of Rs. 400 being paid per month for a period of 13 months during which the tenancy was to continue. According to the plaintiffs it was also agreed that with regard to the tenancy of certain months anterior to the explosion for which the plaintiffs had not paid rent, they should pay a pugree of Rs. 60 a month for 5-ir months, which came to Rs. 345. According to the plaintiffs, they paid these two pugrees and went into possession of the godown and they filed the present suit for recovering that amount.

2. Now, the learned Judge held that this suit was not a suit for recovery of the puggree, but it was a suit for the recovery of excess rent paid by the plaintiffs, and, therefore, this Court had no jurisdiction to try the suit but the suit was triable by the Court of Small Causes. It is rather significant to note what the defence of the defendants was with regard to the claim of the plaintiffs. Defendant No. 1 took no part in the proceedings. Defendant No. 2's contention was that these amounts claimed by the plaintiffs were puggrees, but they were paid to defendant No. 7 and that defendants Nos. 5, 6 and 7 had on different occasions admitted that this puggree had been received from the plaintiffs. With regard to defendants Nos. 3 to 7, who put in a joint written statement, their contention was that after the tenancy terminated on the explosion having taken place, the plaintiffs were no longer the tenants of the defendants but they were mere licensees, and the defendants required the plaintiffs as a term of the license to contribute the sums of Rs. 5,200 and Rs. 345 as a donation to a charity fund which had been set up. Therefore, it is important to note that it was the case neither of the plaintiffs nor of any of the defendants that the sum that the plaintiffs were claiming was excess rent or an amount paid as rent in addition to the rent chargeable under the Rent Restriction Act. The plaintiffs' case was it was puggree. The case of defendant No. 2 was it was puggree. The case of defendants Nos. 3 to 7 was that there was no tenancy, the plaintiffs were merely the licensees, and the amount paid was certainly not rent but a donation paid to a charity fund. At the hearing counsel for defendants Nos. 3 to 7 gave up the contention that the plaintiffs were the licensees. He admitted the position taken up by the plaintiffs that they were the tenants. Then the learned Judge, without there being any specific issue on the point and without there being any proper pleadings as I have pointed out, on his own as it were came to the conclusion that what the plaintiffs claimed in the suit was not puggree but excess rent. It seems to us that the learned Judge was in error in coming to that conclusion. But even assuming that the learned Judge was right, as in my opinion the matter is concluded by a proper construction of Section 50 of Bombay Act LVII of 1947, it is unnecessary to go further into this question.

3. Now, on the question of jurisdiction, Bombay Act LVII of 1947 contains two sections which are pertinent to the question of jurisdiction that the High Court has with regard to suits falling under the Act. Section 28 deals with suits to be filed after the coming into operation of this Act. That section is in very wide terms and ousts the jurisdiction of this Court to try all suits and proceedings between a landlord and a tenant relating to the recovery of rent or possession of any premises to which the provisions of the Act apply. It also ousts the jurisdiction of this Court to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its provisions. With regard to pending suits, the Legislature enacted Section 50 and it will be apparent that Section 50 is much narrower in its application than Section 28. Section 50 provides that all suits and proceedings between a landlord and a tenant relating to the recovery or fixing of rent or possession of any premises to

which the provisions of Part II apply (the rest of the words are not material) which are pending in any Court, shall be transferred to the Courts mentioned in the Act. Therefore, as far as pending suits are concerned, it is only suits relating to the recovery or fixing of rent or possession of premises between a landlord and a tenant that had to be transferred to the Small Causes Court. It will be important to note that the Legislature in Section 50 does not deal with any suits relating to any claim arising out of this Act. Therefore, it is again clear that all suits pending in this Court when the Act came into force had not to be transferred to the Small Causes Court. It was only the restricted class of suits mentioned in Section 50 that had to be transferred and in respect of which this Court had no jurisdiction.

4. Now, whether the plaintiffs' suit is to recover excess rent or pugree which he has paid to his landlord, it certainly is not and cannot be a suit for recovery of rent. A suit for recovery of rent can only be filed by a landlord against a tenant and that is the only kind of suit contemplated by Section 50. When a tenant pays pugree or when he pays excess rent, he is certainly not filing a suit for the recovery of rent. The suit he is filing is to recover the amount which his landlord has wrongfully obtained from him and to which he is not entitled. To use a well known English expression, it would really be a suit for moneys had and received by the defendants, and I cannot understand how by any stretch of language could it ever be suggested that an action by a tenant to recover excess moneys paid to the landlord could ever be described as a suit for the recovery of rent. Mr. Taraporewalla says that Section 20 gives the right to a tenant to recover excess rent, and Section 18 gives him the right to recover any premium paid by him, and, therefore, Mr. Taraporewalla's contention is that as a tenant has been given the right u/s 20 to recover excess rent, in filing this suit what the plaintiffs are doing is to recover excess rent to which they have been given the right u/s 20 of the Act. It is true that the plaintiffs in filing this suit are availing themselves of the right given to them u/s 20. They are filing a suit in respect of a claim arising out of the act. But these suits are not made transferable u/s 50. Even if it is a suit to recover excess rent paid by the plaintiffs to the defendants u/s 20, in my opinion that suit cannot be characterised or described as a suit for the recovery of rent. It is a well established canon of construction that when the Legislature ousts the jurisdiction of the High Court, the language used by the Legislature must be very strictly construed and the Court must lean against holding that the Legislature has attempted to oust the jurisdiction of this Court except in those classes of cases which are clearly and specifically indicated by the Legislature. The only class of cases which are clearly and specifically indicated by the Legislature are suits for the recovery of rent, and, as I have said earlier, such suits can only be filed by a landlord against a tenant for the recovery of rent. But really when we are considering the question of jurisdiction we must accept all the averments and allegations contained in the plaint. A plea as to jurisdiction which is tried as a preliminary issue is in the nature of a demurrer and the defendants can only contend that this Court has no jurisdiction on the allegation that

assuming all that is said in the plaint is true, still the Court could have no jurisdiction. If we were to take the averments of the plaintiffs in their plaint, they have filed the suit for the recovery not of excess rent but of pugree. The learned Judge concedes that if this was a suit for the recovery of pugree, this Court would have jurisdiction. They may ultimately fail to establish their case, but as far as jurisdiction is concerned, it was incumbent on the learned Judge to accept the averments made by the plaintiffs in the plaint.

5. In my opinion, therefore, this is clearly a suit which does not fall within the purview of Section 50 of Bombay Act LVII of 1947 and, therefore, this Court has jurisdiction to try the suit. The order, therefore, made by the learned Judge that this suit should be transferred to the Small Causes Court is erroneous and must be set aside.

6. The result, therefore,, is that the appeal is allowed with costs. The appellants will also be entitled to the costs occasioned by the trial of the preliminary issue before the trial Court. Respondents Nos. 3 to 7 to pay the costs of the appellants as well as of respondent No. 2.

Coyajee, J.

7. I agree.