
(1999) 02 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No. 3060 of 1990

Shri Balkrishna Harischandra Patil

APPELLANT

Vs

Shri Madhukar Madhavrao Deshpande

RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2),
13(1)
Evidence Act, 1872 — Section 116

Citation : (1999) 3 ALLMR 3 : (1999) 3 BomCR 160 : (1999) 2 MhLj 304

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : A.V. Anturkar, for the Appellant; R.S. Deshpande, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The landlord is the petitioner herein. The suit was filed by him as Civil Suit No. 1851 of 1987 on 3-12-1987 for eviction of the respondent on the ground of arrears of rent and also bona fide requirement. The Principal Small Causes Court at Pune, on both the grounds granted decree in favour of the petitioner and ordered eviction of the respondent. An appeal being Civil Appeal No. 506 of 1989 was filed before the Additional District Judge, Pune. By the impugned judgment, the lower Appellate Court set aside the decree of eviction and consequently suit filed by the petitioner was dismissed.

2. I heard Counsel for the petitioner Mr. Anturkar and Mr. R.S. Deshpande for the respondent.

3. The admitted fact is that the property in suit situated at 4/36, Sahakari Sevakanchi Sahakari Vasahat, Erandawane, Pune was originally belonged to one K.M. Patil. Said K.M. Patil let out the building for residential purpose for the rent of Rs. 250/- in the year 1970. The petitioner herein was recovering the rent from the respondent and used to pass receipts on behalf of the landlord K.M. Patil. The deceased landlord K.M. Patil had sent notice dated 20-4-1982 to the respondent and terminated his tenancy. Thereupon the landlord Shri, K.M. Patil had filed Suit

No. 1448 of 1982 against the respondent in the Court of Small Causes, Pune for arrears of rent and also for bond fide requirement. The said suit was dismissed on 8-10-1985 and the respondent tenant was directed to pay the cost of the suit with arrears of rent from 1-1-1981 and also education cess. It is also the admitted fact that the said K.M. Patil died on 25-12-1985. The petitioner claims that he was Power of Attorney holder of said deceased K.M. Patil and on the strength of it, he was collecting the rent. He also claims that before death of K.M. Patil, he was nominated before the Society to hold the property. It has also come out that no legal representatives of K.M. Patil has ever demanded arrears of rent from the respondent. The lower Appellate Authority found that there was no arrears of rent as no demand was made for the same by the competent landlord or agent of the landlord. Moreover, the lower Appellate Court found that the arrears of rent has been deposited by the respondent upto date both on the trial stage and at the appellate stage. The Appellate Court found that the petitioner was authorized by the legal heirs by executing power of attorney for collecting the rent but he has no authorization to file a suit. Moreover, the Power of Attorney was produced subsequent to filing of the suit. Therefore, the lower Appellate Court found that the Power of Attorney cannot be acted upon for the purpose of filing the suit. The Lower Appellate Court also found that the mutation entry made in the Revenue Record in favour of the petitioner will not affect the defence of the tenant. In other words, the entry in the Revenue Record in the name of the petitioner cannot be taken as transfer of title in favour of the petitioner. An attempt was made on behalf of the petitioner to produce document Exh. C and D. Exh. C was the application by the petitioner to the District Survey Officer for informing him about the nomination made by the deceased K.M. Patil as his nominee and requested that his name may be entered in the place of deceased's name. Exh. "D" is the certificate issued by the Society accepting his nomination. But sic both these documents are produced in this Court. Admissibility of these documents at this stage is doubtful. Assuming that these documents can be entertained, in this proceedings, it does not have any bearing on the proprietary rights of the suit property. The society can change his nomination only in respect of rights and liabilities of its member. Any change of nomination in the Society will not automatically change the ownership or title over the property. Therefore, I do not find any relevancy in these documents vis-a-vis dispute involved in this case.

4. The Counsel for the petitioner could not effectively and legally attack the lower Appellate Court order. The lower Appellate Court has rightly rejected claim of the petitioner of bona fide requirement. At the time of filing the suit, he was only a rent collector. It may be argued that going by the definition of the Landlord occurring in the Bombay Rent Control Act, 1947, even a rent collector can be for the limited purpose be treated as landlord. But explanation to section 13(1)(g), clearly excludes the right of the rent collector to seek eviction on the ground of the bona fide need. At this juncture, it is better to refer explanation to section 13(1)(g) of the Bombay Rent Act:

"the expression "landlord" shall not include a rent - farmer or rent-collector or estate-manager."

It can be seen from the above explanation, that it clearly excludes the competency of the rent collector to maintain suit for eviction on the ground of 13(1)(g) of the Bombay Rent Act i.e. for bona fide requirement.

5. The learned Counsel for the petitioner Mr. Anturkar tried to argue that since the petitioner has inducted respondent as tenant in the suit premises, in view of section 116 of the Indian Evidence Act, the respondent cannot question the competency of the petitioner to collect rent or to file suit against him as landlord. I cannot agree with this submission. Inducting the tenant by a person and the rights to induct a person is quite two different concepts. In order to attract section 116, there must be circumstances, existent at the time of induction of tenant that the person who inducts must be landlord. In this case, it is admittedly within the knowledge of the tenant that K.M. Patil is the landlord and the petitioner is only a rent collector. In view of this matter, contention of the learned Counsel for the petitioner Mr. Anturkar has to be rejected.

6. Regarding mutation entry effected in the Revenue Records it is need less to say that it will not enure any benefit to the petitioner. In this context, the decision of the Supreme Court in Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, is very relevant to be referred to. In paragraph 27 of the decision, the Supreme Court has observed thus :

"Be that as it may, we have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue."

Therefore, the mutation entry effected in favour of the petitioner will not get the title in his favour.

7. In view of the above discussion, I do not find any illegality and infirmity in the order passed by the lower Appellate Court. No interference is called for.

8. In the result, writ petition is dismissed. In the circumstances, no orders as to costs.

Since the writ petition is dismissed, order passed in C.A. No. stands vacated. But this will not exclude the respondent from his liability of depositing the rent in the Court regularly. I further clarify that the person who is entitled to withdraw the said amount, can withdraw such amount on duly satisfying the trial Court his competency to receive the rent.

Rule is discharged accordingly. No orders as to costs.

9. Petition dismissed.