
(2000) 06 BOM CK 0025

In the Bombay High Court

Case No : Second Appeal No. 24 of 1985

Shri Gajanan Tukaram Mohite

APPELLANT

Vs

Shri Bapu Gopal Shelar

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 114

Citation : (2000) 102 BOMLR 77

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Radhakrishnan, J.—The brief facts of this case are that the Appellant was the monthly tenant in an oral tenancy agreement with the original Plaintiff Bapu Gopal Shelar. The said original Plaintiff, since deceased, is now represented by his legal heirs. The Appellant herein was the monthly tenant in Room No. 4 in Grampanchayat House No. 233 in Ward No. 4 at Vangani, Taluka Ulhasnagar, District Thane. The Appellant was paying an amount of Rs. 30/- as and by way of monthly rent to the landlord Bapu Gopal Shelar.

2. It appears that the Appellant was in arrears of rent from May, 1980 till October, 1980. Therefore, the landlord Bapu Shelar had issued a notice to the Appellant through his Advocate dated 18th August, 1980 and terminated the tenancy of the Appellant. Both the learned Counsel conceded that the provisions of Bombay Rent Act will not be applicable to the premises as the same was situated at Vangani, where the said Act does not apply.

3. It appears that the landlord Bapu Shelar through his Advocate's notice dated 18th August, 1980 had terminated the monthly tenancy of the appellant on four grounds, viz. -

A. That the Appellant was not paying the monthly rent regularly,

B. That the tenanted premises were required for his occupation.

C. That the permanent structural alterations in the premises were carried out by the tenant.

D. That the tenant had caused damage to the tenanted property.

4. It appears that the said notice was received by the Appellant on 22nd August, 1980. The appellant did not vacate the suit tenement and therefore the original Plaintiff Bapu Shelar had filed Regular Civil Suit No. 254 of 1980 before the Court of Civil Judge, Junior Division, Ulhasnagar, District Thane. Before the Civil Court both the parties led their evidence and various issues were framed by the Civil Court. Finally, by the judgment and order dated 28th January, 1983 suit was decreed in favour of the Plaintiff Bapu Shelar, and the Defendant (Appellant herein) was directed to hand over vacant possession of the suit premises to the Plaintiff (Respondent herein) on or before 25th February, 1983 and was also directed to pay a sum of Rs. 228/- to the Plaintiff towards the arrears of rent and the notice charges.

5. Being aggrieved by the aforesaid decree dated 28th January, 1983 passed in the above suit, Appellant herein had preferred a Civil Appeal No. 76/1983 before the Court of Extra Assistant Judge, Thane. Before the learned Lower Appellate Court, both the learned Counsel contended that the provisions of Bombay Rent Act do not apply to the said suit premises. The learned Lower Appellate Court had agreed with the findings of the Trial Court that the termination of tenancy was lawful and valid. It appears that only the point which was strongly argued before the learned Lower Appellate Court on behalf of the Appellant was for seeking the relief against forfeiture. It appears that the Appellant was ready to pay rent in arrears and in fact he had deposited the same in the Court, and as such, it was prayed that he should be granted relief against forfeiture as provided u/s 114 of the Transfer of Property Act. However, it was observed by the learned Lower Appellate Court that neither such case was made out by the Defendant in the Trial Court, nor had he pointed out the definite circumstances which would have entitled him to get relief against forfeiture. It was also argued by the learned Counsel for Respondent that neither in the written statement, nor before the Trial Court any such plea for relief against forfeiture as provided u/s 114 of the Transfer of Property Act was taken by the Appellant. The learned Lower Appellate Court had found that it was the discretionary relief and therefore, the learned Lower Appellate Court was not inclined to grant it to the Appellant and dismissed the above appeal by its judgment and order dated 6th November, 1984.

6. Being aggrieved by the judgment and order of the learned Lower Appellate Court dated 6th November, 1984, the present Second Appeal has been filed by the Appellant. The learned Counsel for the Appellant has sought to raise a substantial question of law, in the sense, that the learned Lower Appellate Court ought to have exercised his discretion in favour of the Appellant in invoking the

protection u/s 114 of the Transfer of Property Act, inasmuch as all the arrears of rent were already deposited before the Lower Appellate Court, and therefore Appellant ought to have been protected from eviction.

7. Section 114 of the Transfer of Property Act, 1882 provides that whether a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrears, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture.

8. Section 111 of the Transfer of Property Act, provides for various modes of determination of lease. Section 111(g) reads as under : -

A lease of immovable property, determines by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

9. From the above, it is very clear that the forfeiture can only be under three circumstances as set out u/s 111(g) of the Transfer of Property Act, 1882.

10. There is no dispute that the monthly tenancy can be terminated by giving 15 days notice expiring at the end of a month of tenancy, as contemplated u/s 106 of the Transfer of Property Act. It is an admitted position that in this case, the monthly tenancy agreement was an oral agreement. The learned Counsel for the Appellant has strongly relied upon the rent receipt issued by the Landlord, of which Clause (1) provides that every month, the tenant must pay rent at the beginning of the said month. Therefore, the learned Counsel for the Appellant contended that if the tenant fails to pay rent at the beginning of the month, there is an implied condition for the Landlord to re-enter the premises. Therefore, the learned Counsel for the Appellant has contended that as per Section 111(g) of the Transfer of Property Act, the forfeiture would have occurred, in the sense, as lessee had breached of an express condition whereby the lessor may re-enter. Mr. Ghaisas, the learned Counsel for the Appellant has stated that the case does not fall under Clauses (2) and (3) of Section 111(g). but falls under Clause (1) of Section 111(g).

11. Section 111(g) provides for various modes of determination of lease. Clause (1) thereof very specifically lays down that in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter. From the above it is very clear that if one were to invoke the provisions of Section

111(g)(1) of the Transfer of Property Act, 1882, the tenant must establish that there was an express condition which must provide that on breach of that condition, the lessor may re-enter. Whereas, Clause (1) of the rent receipt which was relied upon by the learned Counsel for the Appellant only contemplates that during every month the tenant must pay the monthly rent at the beginning of that month. The said Clause (1) of the rent receipt, no-where states that on failure to pay the said rent, the landlord may re-enter. Mr. Ghaisas, the learned Counsel for the Appellant has agreed that there was no such express condition. But, he further stated that there was an implied condition in the sense that if the tenant fails to pay the monthly rent, the landlord has right to re-enter, and as such, the tenant must be protected against such forfeiture. The learned Counsel for the Appellant has very strongly contended that the Lower Appellate Court has not given any reasons whatsoever in not exercising its discretion, and that the Lower Appellate Court ought to have decided in favour of the Appellant.

12. Mr. Ghaisas, the learned Counsel for the Appellant has relied upon the judgment of the Apex Court in *Praduman Kumar Vs. Virendra Goyal (Dead) by L. Rs.,* . This judgment deals with the issue where for the first time a plea against forfeiture was taken up before the Appellate Court and was never taken before the Trial Court. The Supreme Court has very clearly held that the passing of a decree in ejectment against the tenant by the Court of first instance does not take away the jurisdiction of the Appellate Court to grant an equitable relief. In other words, the Appellate Court has a right to grant such a relief even if the said plea was not taken before the Trial Court. However, this judgment does not help Mr. Ghaisas, inasmuch as, the Lower Appellate Court had permitted the Appellant to deposit all the arrears of rent and had considered this issue whether to grant the relief u/s 114 of the Transfer of Property Act, 1882 or not, and had thereafter declined such relief u/s 114 of the Act.

13. Mr. Oka, the learned Counsel for the Respondent has very strongly urged that, in fact, In this case, Section 114 of the Transfer of Property Act, 1882 can never be invoked, in the sense, Section 114 can be invoked only in case of determination of lease by forfeiture for non-payment. Mr. Oka has contended that if one were to read the provisions of Section 111(g)(1) that in case a lessee breaks an express condition which provides that on breach thereof the lessor may re-enter, then, by no stretch of imagination Clause (1) of the rent receipt can be construed as such an express condition, on breach whereof the lessor may re-enter. Obviously, Clause (1) of the rent receipt states that every month the tenant must pay the rent at the beginning of the month. However, there is no such express condition whatsoever in Clause (1) of the said rent receipt, on breach of which the landlord is entitled to re-enter.

14. Mr. Oka, the learned Counsel for the Respondent has also relied upon the judgment of this Court in the case of *Geetabai Namdeo Daf Vs. B.D. Manjrekar,* . In this judgment, the Court has dealt with the difference between mere termination of monthly tenancy u/s 106 of the Transfer of Property Act as in the

instant case, and the determination of lease by forfeiture as contemplated u/s 111 of the Act. In the said judgment, the Court has very categorically held that only in cases where the forfeiture as contemplated u/s 111 occurs, then only Section 114 can come into play and not in cases where there is a mere termination of monthly tenancy as contemplated u/s 106 of the said Act. In the aforesaid case of Geetabai (supra) both the Courts below had wrongly invoked the provisions of Section 114 of the Transfer of Property Act when no condition whatsoever was existed for invoking the same, and it was a mere case of termination of tenancy as contemplated u/s 106 of the Act, and under those circumstances, this Court had discussed at length the difference between termination of tenancy u/s 106 and the forfeiture of tenancy u/s 114 of the Transfer of Property Act, 1882. In the instant case, as rightly pointed out by Mr. Oka, there is no forfeiture as contemplated u/s 111(g)(1) of the Transfer of Property Act, inasmuch as there is no breaking of an express condition by the lessee, in the sense, there is no such express condition, for the breach of which, the lessor may re-enter. Clause (1) of the rent receipt relied upon by Mr. Ghaisas, the learned Counsel for the Appellant, only contemplates that the tenant must pay monthly rent at the beginning of the month. This cannot be construed as an express condition which provides that on breach thereof the lessor may re-enter. Obviously, there is no question of applying Section 114 of the Transfer of Property Act to protect the Appellant, as the same is not applicable at all in the case of the Appellant.

15. In the aforesaid facts and circumstances, Second appeal is devoid of any merits. Hence, the same stands dismissed with costs.

16. Mr. Ghaisas, the learned Counsel for Appellant prays that his client is ready and willing to give the usual undertaking to this Court to vacate the suit premises on or before 30th September, 2000. If the said usual undertaking, undertaking to this Court that the Appellant will vacate the suit premises on or before 30th September, 2000 is not filed before this Court within a period of two weeks from today, there will be no stay of execution of the decree. If such an undertaking is filed within two weeks from today, the Appellant shall not be evicted upto 30th September, 2000. Till such an usual undertaking is given, the Appellant shall not part with possession or create any third party rights in the suit premises.

17. Parties to act on an ordinary copy of this order duly authenticated by the Section Officer.