

(1955) 09 BOM CK 0005

In the Bombay High Court

Case No : A.F.A.D. No. 1455 of 1952

Sobhachand Chandmal and Another

APPELLANT

Vs

Ganu Hanmanta

RESPONDENT

Date of Decision : 26-09-1955

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70, 85
Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : AIR 1956 Bom 143

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : V.S. Desai and M.M. Virkar, for the Appellant; G.R. Samant and V.V. Divekar, for the Respondent

Judgement

1. The plaintiff filed suit No. 161 of 1950 in the Court of the Civil Judge, Junior Division, at Pimpalgaon, against the defendant for a decree for Rs. 700 as rent for the years Shake 1369 and 1870 of Section No. 7 and the guava garden therein with future interest and costs of the suit. It was the case of the plaintiffs that the defendant was a tenant of the plaintiffs of Section No. 7 of the village of Ambevanl which contained a guava garden.

According to the plaintiffs the defendant had taken the land at a rental of Rs. 400/- and the defendant had agreed to pay Rs. 200/- for the guava garden; and the aggregate amount of annual rent payable by the defendant was accordingly Rs. 600/-.

2. The defence of the defendant was that the agreed rent was Rs. 180 per annum and he had paid the full amount of rent and nothing was due by him. The defendant denied that he had agreed to pay rent at the rate of RS. 200/-for the guava garden or that he had agreed to pay rent at the rate of Rs. 400/- for the cultivable portion of the land.

3. The learned trial Judge on a consideration of the evidence came to the

conclusion that the total agreed rent per annum for the cultivable portion of the land and the guava garden was Rs. 300/-. He also held that the defendant had only paid Rs. 380/- to the plaintiffs, and for the balance of Rs. 220/- the learned Judge passed a decree in favour of the plaintiffs.

Against the decree passed by the trial Court the defendant went in appeal to the District Court at Nasik. In appeal the learned Court dismissed the plaintiffs' suit. The learned District Judge held that no agreement between the parties in respect of rent for the years in question was proved. He further held that the reasonable rent for the land in dispute was Rs. 180/- per annum.

On the view that the payment made by the defendant towards rent fully satisfied the liability of the defendant, the learned District Judge reversed the decree passed by the trial Court and dismissed the plaintiffs' suit. The plaintiffs have come to this Court in second appeal.

4. Now it has to be noted that the two years "1869-1870 Shake" correspond to years 1947-48 and 1948-49. The Bombay Tenancy and Agricultural Lands Act of 1948 was brought into operation in the area in which the land in dispute is situate on 28-12-1948. The rent for the year 1947-48 fell due at the end of that year and when the Bombay Tenancy Act of 1939 was in operation.

The rent for the year 1948-49 fell due when the Bombay Tenancy and Agricultural Lands Act of 1943 was in operation in the area in which the land in dispute is situate. Now under the Bombay Tenancy Act of 1939 it was open to a civil Court to entertain a suit to recover rent and to ascertain the contractual rent, or even the reasonable rent. The learned appellate Judge on a consideration of the evidence has come to the conclusion that for the year 1947-48 the reasonable rent was Rs. 180/- per annum; and I do not think that in second appeal I would be justified in interfering with that conclusion.

It must however be observed that the learned appellate Judge's finding that "no agreement with regard to the rent of the land was proved" cannot be sustained. According to the plaintiff the agreed rent was Rs. 600/- per annum Rs. 200/- for the guava garden and Rs. 400/- for the cultivable portion of the land. According to the defendant the agreed rent was Rs. 180/- per annum.

The parties were not agreed as to the quantum of the rent; but they were agreed that there was an agreement relating to the quantum of rent to be paid by the defendant to the plaintiffs. So far as the rent for the year 1948-49 is concerned, the civil Court had no jurisdiction to entertain a suit for ascertaining "the reasonable rent".

It is open to a civil Court even after the Bombay Tenancy and Agricultural Lands Act was enacted to entertain a suit for the recovery of rent; but when a question is raised as to what is "reasonable rent" the question must be decided by the Mamlatdar by reason of the provisions of Section 70 and Section 85, Bombay Tenancy and Agricultural Lands Act, 1948.

The learned appellate Judge was therefore in my judgment incompetent to decide whether Rs. 180/- was "reasonable rent" for the year 1918-49. In cases where the question as to the determination of "the reasonable rent" arises the usual practice of this Court has been to stay the hearing of the suit or appeal, and give the parties an opportunity to obtain adjudication as to "reasonable rent".

After such adjudication is obtained the Court proceeds to pass a decree consistently with the findings of the Tenancy Courts. Consistently with that practice, I direct that the hearing of this appeal be stayed for a period of three months in the first instance, and the plaintiffs do apply to the competent - authority under the Bombay Tenancy and Agricultural Lands Act, 1948, for a declaration about the reasonable rent for the year 1943-49 of the land in dispute.

If the plaintiffs make such application within the period of three months, further hearing of this appeal will be stayed till the final disposal of the proceedings in the Tenancy Court. If no application is filed by the plaintiffs, the appeal be heard and disposed of on the footing that the plaintiffs have failed to obtain a declaration as to "the reasonable rent" for the year 1948-49.

5. Hearing stayed.