
(2002) 07 BOM CK 0083
In the Bombay High Court
Case No : Appeal From Order No. 583 of 2002

Sutar Pukraj Somtiji	Vs	APPELLANT
Yellubai Mallappa Wagle and Another		RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 33

Citation : (2002) 4 ALLMR 349 : (2002) 5 BomCR 16 : (2002) 4 MhLj 819 : (2002) 3 MhLj 787

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : M.S. Menon, for the Appellant; K.D. Jha, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocate for the appellant and for the respondent No. 2.

2. The appellant challenges the order dated 13-3-2002 passed by the City Court, Mumbai answering the preliminary issue regarding the lack of jurisdiction to the City Civil Court to entertain the suit, in affirmative and, therefore, directing return of the plaint for presentation to the proper Court.

3. Upon hearing the learned Advocates and perusal of the record, it is seen that the appellant has filed the suit for recovery of possession of the suit premises on the ground that the original tenant in relation to the suit premises had surrendered his tenancy in relation to the suit premises on 20th July 1998 and on the very day the premises were leased out to the appellant by the landlord-respondent No. 2 herein; however the suit premises were occupied by the respondent No. 1 from 22nd September 2000 onwards and when the appellant enquired about the same with the respondents and particularly with the respondent No. 2 - the landlord, it was informed to the appellant that respondent No. 1 has rightly obtained the possession of the suit premises and if the

appellant wants to take it back, then he should make arrangement for premium of Rs. 7 lacs within a week's time failing which the transaction with the third party would be completed. The suit is apparently filed for recovery of possession of the suit premises based on claim of tenancy. The trial Court, therefore, referring to Section 33 of the Maharashtra Rent Control Act, 1999 held that the City Civil Court has no jurisdiction to entertain such suit and ordered the return of the plaint by the impugned order.

4. Section 33 of the Maharashtra Rent Control Act, 1999 provides that when the suit premises are situated within the territorial jurisdiction comprised of Brihanmumbai, the Court of Small Causes, Mumbai shall have jurisdiction to entertain and try any suit or proceeding between the landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under the said Act, other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority and subject to the provisions contained in Sub-section (2) of Section 33, no other Court shall have jurisdiction, to entertain any such suit, proceeding or application or deal with such claim or question.

5. Placing reliance upon the decision of this Court in the matters of Faijulbee Hajeel and Ors. v. Yadali Amir Shaikh Ansari, reported in 1984 Mh.L.J. 368 Eknath Vithal Ogale v. Mansukhlal Dhanraj Jain and Ors., reported in 1988 Bom.R.C. 243 and of the Apex Court in the matter of Somnath Burman Vs. Dr. S.P. Raju and Another, , the learned Advocate for the appellant submitted that the issue of tenancy being not in dispute and it is merely a matter of recovery of possession, the City Civil Court will have jurisdiction in the same manner as it has jurisdiction to entertain the suit u/s 6 of the Specific Relief Act or the suit for injunction. It was also further submitted that the pleadings of the parties are to be liberally construed and merely because the appellant has stated in the plaint that the suit is filed based on title that would not disentitle the appellant from claiming relief in terms of Section 6 of the Specific Relief Act.

6. This Court in Faijulbee Hajeel's case (supra) has held that "the Suit u/s 6 of the Specific Relief Act which is based on the allegation of dispossession and which is for recovery of possession of immovable property continues to be within the jurisdiction of the Civil Court despite the fact that the parties may happen to be fulfilling the character of a landlord or a tenant or a licensor or a licensee. The question of the title of the parties including the title of a tenant does not arise in such a case and will naturally be not decided in the suit."

7. The learned Single Judge of this Court in Eknath Vithal Ogale's case (supra) has held that "The suits instituted u/s 6 of the Specific Relief Act cannot be equated with the suits for injunction simpliciter. Section 5 of the Specific Relief Act prescribes that the person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908, and that by institution of suit in a proper forum. Chapter VII of the Specific Relief Act deals with subject of injunction and Section 38(1) of the Act provides

that the perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. In suit for injunction simpliciter, the City Civil Court has to determine whether the defendant has committed a breach of obligation existing in favour of the plaintiff and to ascertain that fact the Court must find out whether the relationship of licensor and licensee existed between the parties and whether the initial entry of the plaintiff in the suit premises was under the authority of law. It is, therefore, not correct to suggest that a suit for injunction simpliciter does not involve any inquiry into the status of the plaintiff. At the same time, the contention that as the suit u/s 6 of the Specific Relief Act is maintainable in the City Civil Court after the tenant is forcibly dispossessed by the landlord, that on the same analogy, the suit for injunction simpliciter before such forcible dispossession should also be entertained by the City Civil Court was not accepted by the learned Single Judge. It was observed that in the suit instituted u/s 6 of the Specific Relief Act the plaintiff does not claim recovery of possession in his capacity as a licensee and the issue of relationship between the licensor and licensee is wholly immaterial, but in the suit for injunction simpliciter relief can be granted provided such a relationship existed. Further, while rejecting the contention that the suit for injunction simpliciter cannot be filed in the Small Causes Court u/s 41 of the Presidency Small Cause Courts Act, the learned Single Judge observed that "section 41 opens with the words "notwithstanding anything contained elsewhere in this Act", and therefore the suit relating to recovery of possession between licensor and the licensee, and even for an injunction, can only be instituted in the Court of Small Cause in accordance with Section 41 of the Act."

8. The Apex Court in Somnath Berman's case (supra) held that "Section 9 of Specific Relief Act, 1877 is no way inconsistent with the position that as against a wrong doer, prior possession of the plaintiff in an action of ejectment is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong doer cannot successfully resist the suit by showing that the title and right to possession are in a third person and, therefore, a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. Apparently the suit was against a trespasser and the same was not between the landlord and the tenant.

9. As already seen above, the suits relating to issue of possession between the landlord and the tenant are to be entertained and tried by the Court of Small Causes when the suit premises are situated within the territory of Brihanmumbai in terms of Section 33 of the Maharashtra Rent Control Act, 1999. The pleadings of the appellant in the plaint ex facie disclose that it is the case of the appellant himself that the respondent No. 1 is in possession of the suit premises with the consent of the respondent No. 2-landlord. Besides, in order to obtain the possession of the suit premises, the respondent No. 2-landlord has made it clear to the appellant that the latter has to arrange for payment of premium of Rs. 7

lacs failing which the transaction with the third party would be completed. The pleadings, therefore, apparently disclose the possession of the respondent No. 1 in relation to the suit premises with the consent and at the instance of the respondent No. 2-the landlord and the possession of the suit premises is sought to be obtained from both the respondents. It is also apparent that possession of the suit premises is sought to be obtained on the basis of the claim that the appellant is the tenant in respect of the suit premises and the tenancy is said to have been created by the respondent No. 2-landlord. The suit, therefore, on all counts, is for possession of the suit premises from the respondent-landlord as well as from another person in physical possession of the suit premises on behalf of the landlord. The suit is therefore basically between the landlord and a person claiming to be the tenant and for possession of the tenanted premises. Therefore, considering the provisions contained in Section 33 of the Maharashtra Rent Control Act, 1999, the jurisdiction to entertain such a suit squarely vests in the Court of Small Causes. Being so, no fault can be found with the impugned order for answering the preliminary issue regarding lack of the jurisdiction to entertain the suit by the City Civil Court in affirmative and returning the plaint for presentation thereof in the Court of competent jurisdiction.

10. The decision of the Apex Court in Somnath Berman's case (supra) being against a trespasser has absolutely no application to the case in hand. So also the decisions in Eknath Vithal Ogale and Faijulbee (supra) are also of no help in the matter in hand. Hence the Appeal fails and is hereby summarily rejected.

The parties may be provided with ordinary copy of this order duly authenticate by P.S. Sheristedar of this Court.