

Ganesh Gopal Vs. Moreshwar Narayan

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Court : Mumbai

Decided On : Dec-08-1950

Reported in : AIR1951Bom352; (1951)53BOMLR310; ILR1951Bom385

Judge : Chagla, C.J.

Acts : [Court Fees Act, 1870](#) - Sections 7

Appeal No. : Civil Revn. Appln. No. 854 of 1950

Appellant : Ganesh Gopal

Respondent : Moreshwar Narayan

Advocate for Def. : K.M. Dharap and ;U.S. Hattayangadi, Adv.

Advocate for Pet/Ap. : V.M. Tarkunde, Adv.

Judgement :

ORDER

Chagla, C.J.

1. A very interesting question arises in this Civil Revn. Appln. as to whether the suit filed is covered by Section 7(v) or Section 7(xi)(cc), Court-fees Act.

2. A few facts may be stated. Deft. 4 was lessee of defts. 1, 2 & 3 under a lease dated 28-8-1941, expiring on 29-3-1949. Pending this lease the pltf. passed a rent

note in respect of the same property to defts. 1, 2 & 3 on 9-1-1942, & under this rent note he was to get the property from 30-3-1949. The rent fixed under this rent note was Bs. 800 for the first year & the rent note was for ten years. As deft. 4 failed to vacate & give possession to the pltf. on 30-3-1949, the pltf. after giving notice both to his landlords defts. 1 to 8 & to deft. 4, filed a suit on 12-4-1949. The pltf. valued the suit for c. fs. & for jurisdiction at Rs. 800 being the rent fixed under the rent note. It was contended by the defts. that the valuation for the purposes of jurisdiction was erroneous, that the learned Junior Civil Judge before whom the suit was filed had no jurisdiction & the valuation for the purpose of jurisdiction being more than Rs. 10,000 the suit should be transferred to the Ct. of the Senior Civil Judge; & the question that I have to consider in this civil revn. appln. is as to whether the learned Junior Civil Judge has jurisdiction to try this suit.

3. Now, under Section 8, Suits Valuation Act, 1887, where in suits other than those referred to in the Court-fees Act, 1870, Section 7 paras. v, vi, & ix, & para. x, Clause (d), c. fs. are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of c. fs. & the value for purposes of jurisdiction shall be the same. The rival contentions before me are that of the defts. that the suit falls under Section 7(v), Court-fees Act & therefore it is taken out of the purview of Section 8, Suits Valuation Act; & the other contention is that it falls under Section 7(xi)(cc), Court-fees Act & Section 8, Suits Valuation Act applies, & therefore the valuation for purposes of jurisdiction & the c. fs. is the same. In order to determine this point the first & most important question is, what is the nature of the suit. The proper c. fs. which a pltf. has got to pay is to be assessed, not from the contentions taken up by the defts. not from the written statement filed by them, but from the nature of the suit which he institutes in the Ct. of law, & the nature of the suit is to be determined from the plaint which he puts on file. Clearly the suit filed by the pltf. is a suit for possession under his lease. He has a right to possession from his landlords defts. 1 to 3. There is an obligation upon the lessor to give quiet possession to the lessee, & as the pltf. has passed a rent note in favour of defts. 1 to 3, he is entitled to possession under the rent note, & therefore he has made defts. 1 to 3 parties to the suit. It so happens that deft. 4 is a tenant of defts. 1 to 3 holding over after the expiry of his lease, & as deft. 4 is in actual possession of the property, the pltf. has also made him party to the suit so that he

could get possession if a decree is passed in his favour. It is, therefore, clearly a suit for possession, & it is well settled that all general suits for possession, unless they are specifically dealt with, fall under Section 7(v), & the contention of Mr. Dharap is that this is a suit which falls under Section 7(xi)(cc) & therefore it does not fall under the general provisions of Section 7(v).

4. Section 7(xi) deals with suits between landlord & tenant. It only refers to suits where the relationship of the parties to the suit is that of landlord & tenant). In the first place, one has to ascertain that there is such a relationship & then the next question would be as to whether the suit falls under any of the sub-clauses that follow. It is not necessary that all suits between landlord & tenant should be exclusively dealt with under Section 7(xi). Therefore in order to attract the application of Section 7(xi) it must be a suit between landlord & tenant & it must fall in one of the classes of suits dealt with under Section 7(xi)(a) (b) (c) (d) (e) or (f). If it does not fall in any of these classes of suits, then such a suit would again fall under Section 7(v). Turning to Section 7(xi)(cc), it provides for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy. It is therefore clear that this refers to a suit by a landlord against his tenant. It may be a suit for ejectment on the termination of a tenancy by efflux of time, or it may be a suit against a tenant who has continued to remain as a tenant holding over after the tenancy was determined. But the nature of the said is clearly & precisely indicated. The plaintiff must be the landlord & he must sue his tenant in ejectment. It is difficult to see how, apart from any other consideration & on a mere construction of the plain language of these sub-clauses, it could be contended that the present suit is a suit by a landlord for ejecting his tenant. As I pointed out before, the suit is by a tenant against his landlord & the grievance of the tenant is that he has not obtained possession under the lease to which he was entitled. Put in this way there seems to be no answer to Mr. Tarkunde's contention that this is not a suit which could possibly attract the application of Section 7(xi)(cc). But the answer given by Mr. Dharap, which I must confess is a very ingenious one, is that if not in terms in substance or rather, as it is put, in spirit the action is by a landlord against his tenant for ejectment, & the argument is submitted in this way. It is argued that defts. 1 to 3 could undoubtedly have sued deft. 4 for ejectment on the expiration of the tenancy

on 29-3-1949. It is that right which is being exercised by the plaintiff. He is seeking to eject defendant 4 & thereby he has put himself in the shoes of the landlord, & it is also contended that to the extent that the tenant has a right to possess the property in that limited sense, the right of possession has been assigned by the landlord to the tenant.

5. A very interesting argument was advanced before me by Mr. Dharap that a tenant has a right to sue for possession against the erstwhile tenant of his landlord who has held over & who has not given possession to his landlord, if the tenant suing has a right to that possession. I do not think, as I shall presently point out, that it is necessary to enter that interesting region & decidewhat exactly is the true position because there can be no doubt that a tenant has a right to sue a previous tenant holding over if he also sues the landlord in the same suit as he has done in this case. It is also undisputed that a lease is not an assignment of the property & a lessee is not an assignee of the landlord. As far as I can see, the position is that a lessee has a right against the landlord to the quiet possession of the land leased to him & there is an obligation upon the landlord to give quiet possession to the lessee. But whether this particular obligation can be enforced by the lessee against a previous tenant of the landlord holding over or not is another matter which need not be investigated in this suit because for the purposes of this suit I am prepared to assume, as it must be assumed, that the plaintiff has a right to obtain possession from defendant 4. The question is, in what capacity is he seeking for possession? Is the possession of a nature & character which falls under Section 7(xi)(cc) or is the character of the possession such that it attracts the application of Section 7(v). I fail to understand how the plaintiff can have any right to possession against defendant 4 as a tenant holding over. That right can only be exercised by defendant 4's landlord. The only right that the plaintiff can possibly have is to protect his possession against trespassers & he can sue to eject defendant 4 only as a trespasser as far as he himself is concerned. His only right against defendant 4 can be that as the lessee of the landlord he is entitled to possession & defendant 4 is disturbing his possession & interfering with it & therefore defendant 4 is a trespasser. He could not come to Court on the allegation that defendant 4 was his tenant, he was holding over, & he is entitled to sue him for ejectment. Mr. Dharap says that that right has been assigned to him by the landlord when the lease was executed in his favour. That

contention I am not prepared to accept. By executing a lease the landlord does not transfer or assign to his lessee any rights that he may have against his own tenant. He may transfer to the lessee, as the very definition of the lease implies, the right to enjoyment of the pro-perty & that right to enjoyment may carry with it the right to file suits against trespassers; but that right does not certainly carry with it the right to proceed against a tenant of his landlord as a tenant. If this be the true position, then there can be no doubt that Section 7(xi)(cc) can have no application, & if Section 7(xi)(cc) has no application, then clearly the suit must fall under Section 7(v).

6. Now let me briefly glance at the authorities which were cited at the bar. There is a direct decision of the Madras H. C. which has taken the contrary view to the one I have taken, & that is a case reported in *Ghulam Dastagir v. Marudai Pillai* : (1948)1MLJ338 . That was a case where the facts were very similar to those I have before me, & Bell J. took the view that the word 'landlord' may cover a lessee who under Section 108, T. P. Act, has every legal right to pursue such a remedy. The learned Judge further says that it would be in his opinion a most artificial approach to the Court-fees Act to say that a valid lessee could only exercise his undoubted rights under Section 108 at great cost under Section 7(v), Court-fees Act, while the landlord, if he chooses to bring the same suit for ejectment, could avail himself of Section 7(xi)(cc). Obviously, the learned Judge was influenced by the fact that the lessee would have had to pay higher c.-fs. by pursuing the same remedy as the landlord could have done. Fortunately, in this case before me the position I am told is the reverse. By bringing the suit under Section 7(v) the pltf. will have to pay less c.-fs. than by filing a suit under Section 7(xi)(cc). With great respect to the learned Judge, it is perfectly true that the lessee is pursuing the same remedy as the landlord only to the extent that he is trying, to get possession which it was the duty of his landlord to do & hand over to him. But the similarity does not go beyond that point because, as I have said before, whereas the landlord would have sued the person in possession as his tenant holding over, the lessee can only sue him as a trespasser & nothing more. In coming to this decision the learned Judge did not bear in mind, again with respect to him, an earlier decision of his own H. C. & that is a decision of a Sp. B. reported in *Suryanarayana v. Narasimhaswamy* A. I. R. 1939 Mad. 360: I L. R. (1939) Mad.

367 There a lessee brought a suit for specific performance of a contract of lease for possession of the property. The Ct. held that the suit was in substance not for specific performance but one for possession against strangers to the contract who according to the pltf. were withholding possession from him, & according to the Sp. B. the suit fell under Section 7(v) & not under Section 7(x)(c). Therefore in that case the Madras H. C. did not look upon the suit filed by the pltf. as a suit by a landlord, but looked upon it as a suit for possession against persons who were strangers to the contract. Similarly here deft. 4 is a stranger to the lease as between defts. 1 to 3 & the pltf. In *Palaniappa v. Sithravalu* 31 Mad. 14: 17 M. L. J. 478, which is a still earlier case, there was a suit by the lessee of certain malvaram rights to recover possession from his landlord & others claiming through the landlord, & it was held that the suit fell under Section 7(v) & not under Section 7(xi)(e), although one of the grounds which led the Ct. to that conclusion was that as required under Clause (e) the Pltf. was not entitled to occupancy rights. But the Ct. also came to that conclusion on the other ground, viz. that the suit was not merely between the tenant & the landlord, viz. between the pltf. & deft. 1 but also between the pltf. & defts. 4 & 5 who were claiming under deft. 1 & therefore as between the pltf. & defts. 4 & 5 the suit was not between landlord & tenant.

7. Then there is a direct authority to the contrary in *Haladhar Pal v. Mongal Raja* : AIR1931 Cal333 & that is a judgment of Mukerji J. In that case the suit was by a person who alleged to be a tenant & he filed a suit for possession against his landlord & against certain persons who according to him were trespassers, & Mukerji J. held that Clause (xi) (cc) applied to a suit for recovery of immovable property from a tenant & did not apply where the suit was for recovery of land from a trespasser. There is also force in Mr. Tarkunde's contention that when a landlord files a suit for ejectment against his tenant, a tenant is estopped from challenging the title of the landlord, but when a tenant files a suit relying on his tenancy the position is very different because there is no estoppel in law which would preclude the defts. from putting the tenant's title in issue. Mr. Dharap has relied on a decision of the Assam H. C. in *Prahlad v. Rash Behari* A. I. R. 1949 Gau 64. In that case the pltf. has purchased the property before the determination of a lease in favour of the defts. & after the determination of the lease they filed a suit for possession against the defts. & the Ct. held that the defts.' possession was that of

a lessee & that the plttf's suit in substance was a suit by a landlord against a tenant holding over & the provisions of Section 7(xi)(cc) applied. I do not think that this decision can be of much assistance to Mr. Dharap, because this was a case of a vendee to whom all the rights of the landlord were transferred & assigned suing the tenant of his vendor, & the Ct. expressly stated in the judgment that by reason of Section 109 the vendee had the same rights against the lessee as the vendor would have had. If this was a case of vendor & vendee, then there would not have been much difficulty, but I am dealing with a case of lessor & lessee & I do not think that any analogy can be drawn in the legal relations between a vendor & vendee & lessor & lessee, nor can it be said that the lessee has the same rights against the lessor's tenant as a vendee has against the tenants of a vendor.

8. In my opinion therefore differing with respect from the decision of the Madras H. C. in Ghulam Dastagir v. Marudai Pillai : (1948)1MLJ338 , the suit falls under Section 7(v), Court-fees Act, & therefore the valuation for the purposes of jurisdiction must be the market value of the property, & admittedly the market value is much more than Rs. 10,000.

9. I will therefore, set aside the order passed by the learned Joint Civil Judge, Baramati, & direct; that the suit be transferred to the file of the Senior Civil Judge, Poona. Rule absolute with costs.

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