

Ramesh Vithalrao and anr. Vs. Dixit and Apte Engineers and Constructions and ors.

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Court : Mumbai

Decided On : Apr-20-2000

Reported in : 2000(3)ALLMR698; (2002)1BOMLR477; 2002(1)MhLj239

Judge : V.K. Barde, J.

Acts : Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 - Sections 15 and 15(2); Indian Partnership Act, 1882 - Sections 4

Appeal No. : Civil Revision Appln. No. 969 of 1991

Appellant : Ramesh Vithalrao and anr.

Respondent : Dixit and Apte Engineers and Constructions and ors.

Advocate for Def. : A.A. Joshi, Adv.

Advocate for Pet/Ap. : H.T. Joshi, Adv.

Disposition : Application dismissed

Judgement :

1. The two petitioners had filed a petition before the Rent Controller, Aurangabad, for possession of the suit premises against respondent Nos. 1, 2 and 3. The petition was filed on 5-1-1980. It was the contention of the petitioners that the

petitioner No. 1, Ramesh, was of 16 years of age at the time of filing of the petition and he was under the guardianship of his mother, petitioner No. 2, Ushabai. The petitioners further contended that the respondent No. 1, M/s Dixit and Apte Engineers and Construction were tenant in the suit premises on monthly rent of Rs. 90/- with effect from 1-1-1959. However, later on, the firm was dissolved and, therefore, the tenancy in the name of the firm also came to an end. The petitioners demanded the possession of the suit premises from the respondent No. 2 Madhukar Apte. But he refused to give possession and allowed the family of Shri S. V. Apte, his brother, to occupy the suit premises and thus the respondent No. 3, wife of Shri S. V. Apte, by name, Mangala, has become the sub-tenant. This sub-tenancy was illegal and, therefore, possession of the premises was claimed.

2. The petitioners took next ground that the respondent No. 3. Mangala, had alternative accommodation at Pushpanagari at Aurangabad and she can very well reside there. So, she does not need the suit premises and on the ground of tenant acquiring suit alternative accommodation, the possession of the premises was claimed.

3. The third ground for claiming possession was that Ramesh had completed his matriculation and he was attending college at Aurangabad. Both the petitioners had to stay at Aurangabad permanently. They were in search of some other rented premises. But they could not get it and, therefore, they need the suit premises bona fide and reasonably for their personal occupation.

4. The learned Rent Controller framed the necessary issues, recorded evidence of both sides and then came to the conclusion that the petitioners failed to prove that they require the suit premises reasonably and bona fide for their personal occupation. He also held that the petitioners failed to prove that the respondent No. 3 was sub-tenant and also failed to prove that the respondent No. 3 had obtained suitable alternative accommodation. In view of these findings, the application was dismissed.

5. Thereafter, the Rent Appeal No. 11/1989 was filed before the District Court, Aurangabad. The learned District Judge fully considered the respective cases of the petitioners and the respondent and dismissed the appeal. Hence, the present

Civil Revision Application.

6. The learned counsel for the petitioners has argued that the suit premises was leased to the respondent No. 1 and when the respondent No. 1 was dissolved, tenancy had come to an end. The respondent No. 3 was inducted in the premises by the respondent No. 2 and so, she is sub-tenant. The ground of sub-tenancy was not properly considered by the two lower Courts and, therefore, the findings recorded by the two lower Courts be set aside.

7. Though it is contended in the petition filed before the Rent Controller that the respondent No. 1 was a company, in fact, it was a firm registered under the Partnership Act. Respondent No. 2, Madhukar, and the husband of respondent No. 3, the two brothers, were the partners in that firm. That firm is dissolved. But the question arises whether because of the dissolution of the firm, tenancy rights also have come to an end. It clearly appears that on dissolution of the firm, the premises were not handed over to the landlord by the partners. The partnership deed or the agreement for dissolution of the firm are not on record and, therefore, there is nothing on record to ascertain what were the rights of the partners when the firm was doing the business and how those rights were distributed amongst the partners after the dissolution of the firm. However, in view of the oral evidence given in this case by the petitioner No. 2, it is not necessary to go into that question.

8. Petitioner No. 2 Ushabai, in her deposition has admitted that the suit premises were taken on rent by the firm for the business of the firm as well as for the residence and she has also admitted that since the inception of the tenancy. Shri S. V. Apte, husband of the respondent No. 3, was residing in the suit premises and even after his death, wife of respondent No. 3 continued to reside in the suit premises. In the light of this admission, it is very clear that the suit premises was taken on lease not only for the business of the firm but for residence of the partner of the firm, and it was known to the landlord. So, on dissolution of the firm, it cannot be that the tenancy rights had come to an end.

9. In this respect, I would like to refer to ruling of Delhi High Court, in the matter between Kanahiya Lal Balkishan Dass v. Labhu Ram : AIR1971 Delhi219 . In the

said matter also, the premises was leased to the firm and the observations in para 7 of the judgment are the most relevant, which are as follows:--

'Mr. Radhey Mohan Lal argues that even if Labhu Ram was a partner of firm Gokal Chand Jagan Nath, the allotment of the premises in dispute to him on the dissolution of the firm should be held to amount to subletting. The learned counsel in this context has emphasised the fact that the original tenant of the premises was firm Gokal Chand Jagan Nath. There is no force in the above contention. A firm, it is well known, is a compendious name of the partners constituting the firm. According to Section 4 of the Indian Partnership Act, 1932. Persons who have entered into partnership with one another are called individually partners and collectively a firm. It would, therefore, follow that when firm Gokal Chand Jagan Nath took the premises in dispute on rent from the appellants. Labhu Ram who was one of the partners of the firm became along with the other partners a tenant in the premises. Subletting essentially entails the induction of a third person into the premises. The allotment of the shop to one of the partners of the firm, which was the tenant of the premises, upon its dissolution cannot amount to subletting.'

10. In the present case also, the suit premises was taken on rent by the firm. So, every partner became tenant. Husband of the petitioner who was partner of the firm, started to reside in the premises along with his family immediately taking it on rent. It appears that after the dissolution of the firm, the tenancy rights were allotted to the husband of the respondent No. 3 and, therefore, he continued to reside in the premises along with his family. No third person in the form of the respondent No. 3 was inducted as sub-tenant either by the firm or by partner of the firm. In such circumstances, the learned Rent Controller as well as the learned District Judge have rightly come to the conclusion that the petitioners have failed to prove that the respondent No. 3 is sub-tenant in the suit premises. So, the petitioners are not entitled to get possession of the suit premises by relying on the provisions of Clause 'A' of Sub-clause 'ii' of Sub-section (2) of Section 15 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (for short, hereinafter referred to as 'the Hyderabad Rent Act').

11. The second ground taken by the petitioners for possession of the suit premises is the bona fide requirement of the landlord. It is the case of the petitioners that the partition had taken place between Ramesh and his brothers and the suit premises Block No. 1 was allotted to the share of Ramesh. Ramesh was a college going boy. When the petition was filed, he was minor. As a guardian and as a next friend, his mother was acting in the proceedings. The question regarding partition between brothers is not seriously disputed by the respondents. The important question is whether Ramesh required the suit premises for his personal occupation. It is the finding recorded by the learned Rent Controller as well as the learned District Judge, that if Ramesh was a minor living with his mother in the family house in the other block, how it could be that he required the suit premises for personal bona fide use. How was he going to stay separately from his mother. It is also recorded that the family was having sufficient accommodation for their residence.

12. The question of bona fide requirement is purely question of fact. The learned Rent Controller as well as the learned District Judge have fully considered the evidence on record in this respect and have recorded concurrent findings. So, I do not think that the findings can be set aside in the Civil Revision Application when the jurisdiction of the High Court is very much limited. There is nothing to indicate that the findings on this issue recorded by the learned Rent Controller or by the learned District Judge are perverse or those are based on no evidence or there is misdirection while interpreting evidence of the parties.

13. In this respect, the learned counsel for respondent has pointed out some technical defects in the matter which, according to him, go to the root of the matter. When the learned Rent Controller dismissed the petition filed by the two petitioners, the appeal was filed in the year 1989. In the appeal memo, Ramesh is again shown as minor of 16 years of age and Ushabai, his mother, is shown as his next friend. He has pointed out that the Vakalatnama for the Advocate appearing for the appellant was signed only by Ushabai and not by Ramesh. Ramesh who was 16 years of age in the year 1980 had crossed the age of 18 years by the time the case was decided by the learned Rent Controller. He had become major. But he had not filed any appeal against the dismissal of the petition. The suit premises

was required for reasonable and bona fide requirement of Ramesh. He did not dispute the finding recorded by the learned Rent Controller by filing appeal and, therefore, that issue is closed, so far as Ramesh is concerned. He has, therefore, argued that the decision given by the learned Rent Controller has become final. So far as Ramesh is concerned, there was no appeal against that decision and, therefore, Ramesh now cannot file any Civil Revision Application against the decision given by the learned District Judge.

14. There is substance in this argument. It was all right that while filing petition before the learned Rent Controller, Ushabai was shown guardian and next friend of Ramesh, but when Ramesh had become major, it was necessary for him to amend the petition properly. It was necessary to challenge the decision given by the learned Rent Controller by filing appeal properly. Though name of Ramesh is shown as one of the appellants in the appeal filed before the District Court, Aurangabad. It was not filed by him in his own capacity as a major person. Ushabai would have signed Vakalatnama only for herself and she could not sign it for and on behalf of Ramesh because by that time Ramesh had become major. For all legal purposes, there was no appeal filed by Ramesh against the decision given by the learned Rent Controller and, therefore, revision petition is also not maintainable so far as Ramesh is concerned.

15. The learned counsel for the respondent has also argued that the respondent Nos. 1 and 2 M/s Dixit and Apte Engineer's and Construction, and Shri Madhukar V. Apte, respectively, are deleted from the present Civil Revision Application and only original respondent No. 3, Mangala, is retained as the respondent. If it is the contention of the petitioners that the firm was the tenant and Mangala was sub-tenant inducted by the tenant, then as per the Hyderabad Rent Act, tenant is necessary party to the proceedings. Tenant is not made a party to the proceedings and, therefore, the contention of the petitioner, that the original respondent No. 3, Mrs. Apte, is a sub-tenant, is not worth considering in this matter.

16. It appears that because of the findings given by the learned Rent Controller and the learned District Judge, the petitioner came to know that there was no purpose in pressing the plea that Mangala was sub-tenant and, therefore, plaintiff

has not proceeded against the respondent No. 1, the dissolved firm and respondent No. 2, Madhukar Apte. But this is again a surmise and no argument to that effect is advanced by the learned Counsel for the petitioners. This is another technical defect in this Civil Revision Application. If any decree is to be passed, it has to be passed against the tenant for eviction of the tenant and if the tenant is not there as a party to the proceedings, then it is difficult to pass any decree for eviction.

17. The third ground on which the possession was claimed by the petitioner, is that the respondents had obtained alternative suitable accommodation. It was contended that the premises in Pushpanagari area at Aurangabad was obtained by the respondents. The evidence on record shows that, that premises was obtained by Madhukar, brother of husband of respondent No. 3, and Madhukar was residing in that premises along with his family and, therefore, the learned Rent Controller as well as the learned District Judge have recorded the finding that the petitioners have failed to prove that the respondent No. 3, Mangala, had, acquired suitable alternative accommodation. This is again a finding of fact. The evidence is properly marshalled by the learned Rent Controller as well as the learned District Judge and there is nothing to disturb these findings recorded by them. The petitioners have failed to prove that the respondent No. 3. Mangala, obtained alternative accommodation and, therefore, the petitioners were entitled to get vacant possession of the suit premises from Mangala.

18. The petitioners have filed Civil Application No. 3796/1995 contending that during the pendency of this Civil Revision Application, respondent No. 2, Madhukar, has secured alternative premises in Garkheda area at Aurangabad and, therefore, this is a subsequent development. It should be taken into consideration and decree for possession can be granted in favour of the petitioners in view of the provisions of Section 15(2)(v) of the Hyderabad Rent Act.

19. The son of respondent No. 3. Manohar, has filed affidavit in reply to this Civil Application and has contended that the respondent No. 3A, Manohar Shridhar Apte, that means son of Mangala, has obtained the premises but it is already mortgaged and he had also taken some other loans for constructing the said

house and, therefore, it is not in actual possession of Manohar and it is also contended that it is not a suitable accommodation.

20. The learned Counsel for the petitioners has relied upon the ruling of the Apex Court, in the matter between Gulabbai v. Nalin Narsi Vohra and Ors., : [1991]2SCR941 , to press the contention that the subsequent evidence can be taken into consideration by the Court. In the said matter, at the appellate stage, the tenant pleaded that the landlord had constructed a big bungalow which could be used by him for his residence as well as office purposes. The appeal was filed by the tenant against the decree of eviction passed by the trial Court. But plea of the tenant-appellant, that the additional evidence be recorded, in this respect, was not properly considered by the Appellate Court and this stand of the appellant was not accepted and decree for possession was confirmed. When the tenant came into Writ Petition before the High Court, against the judgment and decree of the two lower Courts, the Bombay High Court considered the plea of subsequent events and the decree for possession was quashed and set aside and this action of the High Court held to be correct, in the given circumstances, by the Apex Court.

21. The facts of that case clearly indicate that when the landlord was claiming possession of the suit premises, as required reasonably and bona fide for personal use of the landlord, the subsequent event of acquisition of another premises by the landlord, to defeat the claim on the ground of reasonable and bona fide requirement was brought on record by the tenant in appeal. So in those given circumstances, the High Court had taken into consideration the subsequent events.

22. In the present matter, it was pleaded by the landlord that the tenant had acquired some alternative accommodation by identifying the accommodation as situated in Pushpanagari area at Aurangabad and the landlord had failed to prove that aspect of the case. In the appeal before the District Court, again same ground was raised but the landlord failed to prove that aspect of the case. Here again, the landlord cannot make out a case that the tenant is having alternative accommodation at Pushpanagari and that ground has failed. The subsequent

events on which the landlord is relying is acquisition of some other property in the name of son of the respondent No. 3. So, this is altogether a different ground. If this ground is to be made out, then the landlord will have to prove that it is alternative suitable accommodation for the respondent No. 3. This question of fact will have to be considered after leading evidence on that point. So, the present case cannot be treated at par with the case which was under consideration in the above quoted ruling of the Supreme Court, in the matter of Gulabbai

23. Merely acquisition or some other accommodation in the name of same family member of the tenant is not sufficient to grant a decree under Section 15(2) (v) of the Hyderabad Rent Act. It has to be proved that it is the accommodation suitable for the tenant himself or herself. That aspect of the case cannot be considered in Civil Revision Application. In Civil Revision Application, the High Court has to see whether on the basis of evidence-which was before the trial Court and the first Appellate Court, the matter is properly and justly decided. By introducing new evidence in the Civil Revision Application, the decision given by the trial Court or the first Appellate Court cannot be disturbed. That will be unnecessarily widening the jurisdiction of the revisional Court and that is not permissible.

24. This Civil Revision Application is to be considered on the basis of pleadings and evidence which was before the trial Court and there was not the case that Manohar, son of respondent No. 3, had obtained alternative suitable accommodation. So, the findings recorded by the learned Rent Controller as well as the learned District Judge on the basis of evidence which was before them, with respect to alternative accommodation, is quite proper and correct and no interference is called for.

25. In the Civil Revision Application, the petitioner have also taken the stand that Mangala had denied the title of the petitioners and, therefore, the tenant must vacate the premises. Here, it must be noted that the petitioner came before the Court with the plea that there was partition between Ramesh and his brother and the suit premises was allotted to the share of Ramesh. The respondents only denied knowledge of this fact and called upon the petitioners to prove it strictly. That does not mean that the title of the landlord was denied. Only the knowledge

of factum of partition was denied. So, this plea also does not stand.

26. Considering all this, Civil Revision Application No. 969/1991 is dismissed. Rule is discharged. The petitioner to pay the costs of the respondent, deceased Mangala's legal representative.

27. Revision application dismissed.

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