
(2007) 02 BOM CK 0079

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 79 of 2004

Revankumar R. Gaikwad

APPELLANT

Vs

Bachchubhai P. Jethwa

RESPONDENT

Date of Decision: Feb. 22, 2007

Acts Referred:

- Transfer of Property Act, 1882 - Section 109

Citation: AIR 2007 Bom 132 : (2007) 5 ALLMR 631 : (2007) 4 CivCC 45 : (2007) 4 RCR(Civil) 448 : (2007) 2 RCR(Rent) 446

Hon'ble Judges: C.L. Pangarkar, J

Bench: Single Bench

Advocate: V.P. Panpalia, for the Appellant; Z.A. Haq, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.L. Pangarkar, J.

This is a civil revision against the judgment and decree passed by the Additional District Judge, Akola, whereby he allowed the appeal and dismissed the suit. The facts giving rise to the revision are as follows.

2. The applicant/plaintiff instituted a suit for recovery of rent. The plaintiff had purchased the suit house from one Dinkar on 31-5-1993. When the house was purchased, the non applicant/defendant was occupying the premises as a tenant on a monthly rent of Rs. 150/-. The plaintiff, before purchase of the suit house land had called for the objections. Since no objections were received, the transaction was concluded. The plaintiff and his predecessor has informed the defendant to pay the rent to the plaintiff. The defendant avoided to pay the rent. The plaintiff claims arrears of rent from 1-6-1993 to 31-10-1995 for the period of 29 months, amounting to Rs. 4,350/-. The defendant inspite of the notice failed to pay the rent. Hence, the suit.

3. The defendant resisted the suit by filing written statement and denied the title of the plaintiff. It is contended by the defendant that erstwhile landlord Dinkar Sitaram Upshyam had agreed to sell the suit house to him and even earnest money was paid to Dinkar. The defendant continued to be in possession in part performance of the contract and, therefore, the defendant denied his liability to pay the rent. It is also contended that he is not liable to pay the rent since there has been no attornment in favour of the plaintiff.

4. The learned Judge of the trial Court, upon consideration of the evidence, decreed the suit while the first appellate Court reversed the finding of the trial Court and dismissed the suit. Being aggrieved by that, this revision has been preferred.

5. I have heard the learned Counsel for the applicant and the non-applicant.

6. The learned Judge of the first appellate Court has observed that the question of title fades into significance because in order to entitle a person to recover rent, he need not necessarily be the owner. He finds that the plaintiff is not entitled to decree because of the fact that there has been no attornment of tenancy.

7. The plaintiff in order to prove his title has placed on record the sale deed (Exh. 32) and the tax payment receipt. The plaintiff has examined a witness from the Sub-Registrar office to prove the sale deed in his favour. The plaintiff claims to have purchased the house from erstwhile landlord of the defendant. It is not defendant's case that inspite of sale-deed in favour of plaintiff, the original landlord is still demanding rent from him. The record shows that plaintiff had issued notice to the defendant informing him of purchase of the suit house and defendant having sent reply to it vide Exh. 42. It is thus clear from the evidence on record that the plaintiff has established the title and had even issued notice to the defendant about the purchase and defendant having replied to the notice. It is thus clear that the defendant has been made aware of the purchase of the suit house by the plaintiff. As said earlier, the defendant does not say that his erstwhile landlord is demanding rent from him. It is enough for the plaintiff to prove his title and to inform the tenant that he has purchased the suit house and rent should be paid to him. It is not necessary that the tenant must accept plaintiff as landlord and then alone is liable to pay the rent. The tenant can refuse to pay to new owner provided he proves that his erstwhile landlord also demands rent from him. As said earlier, such is not the case of the defendant. Section 109 of the Transfer of Property Act makes it very clear that a transferee has a right to recover the rent. A tenant cannot refuse to pay rent to both on the ground that he has not attorned tenancy. Once the title is established by new landlord and there is nothing to suggest demand by the old landlord, the tenant is bound to pay the rent to new purchaser. The purchaser, however, may not be able to recover the arrears of rent prior to the transfer unless the arrears are also assigned. In this case, purchaser i.e. the landlord is demanding the rent only from the date he has become the owner of the property.

8. It was contended that defendant had entered into agreement of sale with the old landlord and he is in possession under the part performance of contract. Here, it must be borne in mind that mere agreement of sale does not create an interest in the property and as such the defendant cannot absolve himself from paying rent.

9. The learned Judge of the first appellate Court fell in error in holding that the plaintiff is not entitled to recover the rent, since there is no attornment. Since the judgment suffers from illegality, the same needs to be set aside. I, therefore, allow the revision, set aside the judgment and decree of the appellate Court and restore that of the trial Court, Costs as incurred.