

(2006) 05 BOM CK 0026

Bombay High Court

Case No: Second Appeal No. 117 of 1988 and Cross Objection (ST.) No. 11764 of 1988

Mrs. Shantabai Yashwant
Kothare and Others

APPELLANT

Vs

Shri Shankar (since through legal
heirs and representatives
Parshuram Naik deceased,
represented Smt. Prabhavati
Shankar Naik, Parshuram
Shankar Naik, Chandrakant
Shankar Naik and Hemant
Shankar Naik)

RESPONDENT

Date of Decision: May 4, 2006

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 29
- Transfer of Property Act, 1882 - Section 6

Citation: (2006) 4 ALLMR 48 : (2006) 4 BomCR 55 : (2006) 5 MhLj 651

Hon'ble Judges: K.J. Rohee, J

Bench: Single Bench

Advocate: R.S. Apte, for the Appellant; G.S. Godbole, for the Respondent

Judgement

K.J. Rohee, J.

The original plaintiffs have preferred this appeal against the judgment and decree passed by Sixth Additional District Judge Thane, in Civil Appeal No. of 1986 on 30-10-1987, partly allowing the appeal against the judgment decree passed by Joint Civil Judge, J.D., Thane in Regular Civil Suit No. 314 of 1982 on 29-1-1986. The original defendant has filed cross objection.

2. The appellants instituted suit for ejectment and possession of the tenanted premises as well as encroached area.

3. The admitted facts are that the appellants are the owners of field Survey No. 95, situated at village Majiwada, district Thane. The defendant/respondent was working as agricultural labourer with the appellants. Permission to construct hut in the said field was granted by the village Panchayat on 26-11-1957. The respondent was permitted construct a hut and to reside therein as a tenant. Accordingly, the respondent erected a hut and started residing there as a tenant from 1-2-1964.

4. According to the appellants, the rent of the hut was Rs. 12/-per month, whereas according to the respondent the rent was Rs. 2/-per month. According to the appellants, the respondent stopped paying rent from 1-1-1974. The respondent also encroached upon certain land adjoining the hut. Hence, on 29-6-1981 the appellant issued notice to the respondent terminating his tenancy with effect from 31-7-1981. The appellants also called upon the respondent to vacate the encroached area. The said notice was replied by the respondent. Thereafter, the appellants instituted suit for arrears of rent from 1-2-1979 to 31-1-1982, ejectment and possession of the rented premises, as well as encroached area, under the provisions of Transfer of Property Act, against the respondent on 16-2-1982.

5. The respondent resisted the suit by his written statement. In para 9 of the written statement, the respondent submitted that the area of Majiwada Gram Panchayat has been included in the limits of Municipal Corporation, Thane after the institution of the suit and hence the provisions of Bombay Rent Act are applicable to the suit premises.

6. The respondent submitted that he was regular in payment of rent. He denied to have encroached upon any area. He disputed the area of the land leased out to him. According to him, the suit is liable to be dismissed.

7. The parties adduced oral as well as documentary evidence in support of their respective contentions. After considering the oral and documentary evidence, the Trial Court held that the respondent is a tenant of the land admeasuring 20" 20"; that the rent was Rs. 12/-per month; that the respondent is in arrears of rent; that the respondent encroached on the area admeasuring 30" X 26"; that the tenancy of the respondent has been terminated by legal and valid notice. The Trial Court, therefore, decreed the suit in its entirety. The Trial Court did not formulate issue about the jurisdiction of the Court.

8. In an Appeal preferred by the respondent, the Appellate Court held that the area of 20" X 20" was let out to the respondent; that the rent was Rs. 2/- per month; that the respondent encroached upon 6"X 26"area of land; that Bombay Rent Act was applicable to the rented premises as village Majiwade was incorporated in Municipal Corporation, Thane since 1-10-1982. However, the Court of Civil Judge, J.D. can try and decide the suit; that the respondent was not wilful defaulter and therefore the appellants were not entitled to evict the respondent. The Appellate Court, however, held that the appellants are entitled to possession of the encroached portion. The

Appellate Court accordingly partly allowed the appeal.

9. The appellants have come up in Appeal against the said judgment and decree, as their claim for eviction of the respondent from the tenanted premises has been dismissed. The respondent filed cross objection, as decree for possession of encroached area has been passed against them. The respondent raised preliminary objection to the tenability of the second appeal and hence, the matter was heard only on the preliminary objection.

10. I have heard Mr. G. S. Godbole, Advocate for the respondent and Mr. R.S. Apte, Advocate for the appellants.

11. Mr. Godbole the learned Counsel for the respondent submitted that it is not disputed that immediately after the institution of the suit, village Majiwade was included in the limits of Municipal Corporation, Thane. As such, the provisions of Bombay Rent Act became applicable to the tenanted premises situated at Majiwade. Mr. Godbole pointed out that though the respondent had raised objection about jurisdiction of the Court on this count in the written statement itself, it has been completely ignored by the Trial Court. The First Appellate Court held that the provisions of Bombay Rent Act are applicable to the suit premises. Mr. Godbole submitted that under Sub-section (2) of Section 29 of the Bombay Rent Act, no further appeal lies against any decision in appeal. Thus, second appeal is barred under the provisions of Bombay Rent Act. The appellant has filed second appeal and hence, the same is liable to be dismissed, as not tenable. Mr. Godbole submitted that the legal position as on the date when suit came up for decision by the Trial Court will have to be taken into consideration while deciding the question of jurisdiction of the Court. Mr. Godbole, therefore, submitted that the second appeal is liable to be dismissed.

12. In support of his submission, Mr. Godbole placed reliance on the following cases :

- 1) [Qudrat Ullah Vs. Municipal Board, Bareilly](#) ;
- 2) Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Sinha BLR Vol. LXIV,407;
- 3) [Nandlal and Others Vs. Moti Lal](#) ;
- 4) Marutrao Zende v. Eknath Jagtap and Ors. 1980 Mh.L.J. 238 ;
- 5) Suryakant Shah v. Shahanavaz Bhokare 1985 Mh.L.J. 937

13. Mr. Apte, the learned Counsel for appellants, on the other hand, submitted that the legal position on the date when the cause of action arose is material and will have to be taken into consideration, while deciding whether the Civil Court has jurisdiction or the Rent court has jurisdiction. Mr. Godbole submitted that on the date of institution of the suit, village Majiwade was outside the limits of Municipal

Corporation, Thane and the provisions of Bombay Rent Act were not applicable to it. The appellants, therefore, instituted suit under the General Law namely The Transfer of Property Act. During pendency of the suit, village Maziwade was included in the limits of Municipal Corporation, Thane but it will have no effect on the suit. In support of his submission, Mr. Apte relied on - [Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others,](#) wherein it was held that, "the crucial date is the date on which the right conferred by the Act is sought to be exercised". Reliance was also placed by Mr. Apte on : [Nalanikant Ramadas Gujjar Vs. Tulasibai \(dead\) by LRs. and others,](#) wherein it was held that the "material date for ascertaining whether the plot is "premises" for purpose of Section 6 is the date of letting and not the date on which the application for fixation of standard rent was made by tenant or the landlord, and in ascertaining whether the land demised is used for agricultural purposes, the crucial date is date on which the right conferred by the Act is sought to be exercised." The earlier decision in Vasudev Modi v. Rajabhai A. Rehman was followed in Nalinikant Gujjar v. Tulasibai and Ors.

14. I have carefully considered the rival submissions have also gone through the case law. I found that the cases cited by Mr. Apte differ on facts about raising of objection to the jurisdiction of the court and hence, they are not applicable to the facts of the present case. In the present case, since beginning it is the plea of the respondent that the Civil Court has no jurisdiction and that the jurisdiction vests with the Rent Court. It may be noted that as soon as village Majiwade was included within the limits of Municipal Corporation, Thane the provisions of Bombay Rent Act became applicable to the tenanted premises and the tenant/respondent became protected tenant . The Appellate Court committed grave error in observing that Civil Judge, J.D. is the competent court, which is a Civil Court as well as Court invested with Small Cause powers to deal with the cases under the Bombay Rent Act. However, it must be noted that when Civil Judge, J.D. exercises his ordinary jurisdiction, it is not open to him to decide the disputes which fall within the purview of S. 28 of the Rent Act. The appellants instituted a composite suit, invoking two different jurisdictions of the Court and the Civil Court could not have entertained such a composite suit [see [Govindbhai Parshottamdas Patel and Others Vs. New Shorrock Mills, Nadiad,](#)]. So, though the Civil Judge, J.D. was invested with the powers of Small Causes Court, which is competent to try the suits under the Bombay Rent Act, the Trial Court should have returned the plaint for presenting it to the proper Court and should not have proceeded with the suit in its capacity as Civil Court.

15. Thus, I find that the Trial Court had no jurisdiction to try this suit and the Rent Court/Small Causes Court alone was competent to try the suit. In view of this position I pass the following order:

ORDER

(a) The appeal is partly allowed.

(b) The cross objection is allowed.

(c) The Judgments and Decrees passed by the Courts below are set aside.

(d) The matter is sent back to the Trial Court, with a direction to return the plaint to the appellant/original plaintiffs, for being presented to the proper Court viz. Rent Court / Small Causes Court, for disposal according to law.

(e) The suit being very old, the Court concerned shall give priority to it and shall decide it at the earliest.

(f) The parties are directed to bear their own costs.