

(1981) 03 BOM CK 0046

Bombay High Court

Case No: Letters Patent Appeal No. 10 of 1979

Laxmibai Narayan
Satesa

APPELLANT

Vs

Dattatraya Tukaram
Jarande

RESPONDENT

Date of Decision: March 31, 1981

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 28

Citation: AIR 1983 Bom 289

Hon'ble Judges: Rege, J; Kanade, J

Bench: Division Bench

Advocate: M.K. Joshi, for the Appellant; C.G. Solshe, for M.N. Kenia and N.R. Parekh, for the Respondent

Judgement

Rege, J.

This is letters patent appeal by the plaintiff against the judgment and order of Vaidya, J. dated 21st May, 1978 allowing the appeal by the defendant being First Appeal No. 410 of 1973 against the judgment and order of the learned Judge of the City Civil Court dated 13th March, 1973 decreeing the plaintiff's suit.

2. The point at issue in this appeal is whether the jurisdiction of the Court to entertain a suit was to be determined not only on averments in the plaint but on the issues that were to be raised considering the averments in the plaint as well as defence in the written statement.

3. the plaintiff filed a suit in the City Civil Court for eviction of the defendant from the suit premises and possession thereof on the basis that the defendant was his licensee under the leave and licence agreement. The premises consists of a gala or a stall attached to a hotel on the first floor of the building known as Nanabhai Court on Development and Regulation.. Ambedkar Road, Dadar-14. The defendant in his

written statement claimed substance in respect of the said stall from the plaintiff.

4. The learned Judge of the City Civil Court framed issues, inter alia, whether the defendant was a licensee of the plaintiff and whether the plaintiff was entitled to possession of the suit premises. He answered both the issues in the affirmative. He decreed the suit of the plaintiff bolding on the evidence led by the parties at the hearing, that defendant was a licensee of the plaintiff in respect of the suit premises.

5. Against the said judgment and order the defendant filed an appeal challenging various findings of the learned Judge. However, at the hearing f the appeal the learned single Judge only considered the question as to the Court's jurisdiction to entertain and dry the suit. He held that in view of the issue of sub-tenancy arising on the pleadings, the City Civil Court had no jurisdiction to try the suit. accordingly only on hat ground he allowed the defendant's appeal and dismissed the suit. According to the learned Judge, the Court ought to have raised an issue as to sub-tenancy as it was specifically pleaded in the written statement and arising on the pleadings hand that if the same were raised the City Civil Court could not have had jurisdiction to record a finding on that issue and the dispute between the parties could not be ended without deciding that issue which could be exclusively tried and decided by the Small Cause Court under S. 28 of the Bombay Rent Act.

6. As we will presently point out in view of the decision cited across the bar, one of them being a decision of Full Bench of his Court and the other being a decision of Division Bench of this Court expressly overruling the similar view taken by the learned Judge in an earlier decision, the view taken by the learned Judge cannot be accepted.

7. The Full Bench of this Court in its decision in the case of [Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore](#), dealing with the question of jurisdiction of Court observed: ---

"In order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the rel nature of the suit and what in substance the plaintiff has asked for . Whatever may be the form of relief claimed, if on a fair reading of the plaint, it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and the relief claimed in substance relates to recovery of rent or possession or raises a claim or question arising out of the Rent Act or any of its provisions, then it is the special Court alone that will have jurisdiction to decide that suit."

8. These observations make it quite clear that the jurisdiction of the Court to entertain the suit is to be ascertained from the averment in the plaint and not on the basis of defences raised in the written statement. If the averments in the plaint make out only the relationship of a licensor and licensee as in the present case, and do not plead any relationship of a landlord or tenant or does not involve any

question arising under the Rent Act, then, only the Civil Court has jurisdiction to try the suit.

9. The decision of the Division Bench in High case of [Sarfarzali Nawabali Mirza Vs. Miss Maneck G. Burjorji Reporter](#), , also followed the ratio laid down by the aforesaid Full Bench decision, expressly overruling the view taken by the learned Judge in an earlier unreported decision which was similar to the one taken here.

10. Our attention was also draw by the learned draws for the defendant to a decision of the Supreme Court in the case of Natraj Studios (P.) Ltd. v. Navrang Studios AIR 1981 SHE 537 . There also the Court while dealing with the question of jurisdiction quoted with approval, at page 55 of the report, the observations of this Court in its decision in the case of [Govindram Salamatrai and Another Vs. Dharampal Amarnath and Another](#), to the effect that "the question was a jurisdictional question and had nothing to do with the Act or any of its provisions. Whether a person was tenant or a licensee or a trespasser was a question which a not left to the exclusive determination of Special Court set up under the Rent Control Act but the question whether a person was entitled to the benefit of any of the provisions of the Act was a question which could only be decided and determined by Special Court".

11. The said decisions therefore clearly showed that the jurisdiction of the Court was to be determined only from the averments in the plaint and not on the defences in the written statement or on the issues raised and it was only the Court in which the suit was filed which had the jurisdiction to determine the same.

12. On the issues raised, the Court has in this case having come to a conclusion that relationship between the parties was that of a licensor and licensee there was no question of the Court raising an issue as to sub-tenancy and then on doing so hold that it had no jurisdiction Court entertain the suit and send the parties to the Court of Small Causes.

13. In our view, therefore, the view taken by the learned Judge cannot be sustained. The appeal is, therefore, allowed with costs. The order of the learned Judge in appeal in set aside.

14. Since, however, the learned Judge has sought to dispose of this appeal only on the ground of the City Civil Court not having jurisdiction to entertain and try the suit and had not deal with the merits of the appeal, the first appeal would be dealt with by the single Judge on merits.

15. Order of this Court requiring the defendant to deposit the amount by this Court, to continue till the disposal of the appeal.

16. Appeal allowed.