(1958) 04 BOM CK 0034

Bombay High Court

Case No: A.F.O.D. No. 742 of 1955

K.M. Motwani		APPELLANT
	Vs	
Albert Sequeira and Another		RESPONDENT

Date of Decision: April 23, 1958

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 14
- Presidency Small Cause Courts Act, 1882 - Section 41, 43, 46, 47

Citation: AIR 1960 Bom 18 : (1958) 60 BOMLR 1282

Hon'ble Judges: Chagla, C.J; S.T. Desai, J

Bench: Division Bench

Advocate: S.H. Lulla, R.C. Sippy and R.C. Bhavnani, for the Appellant; V.T. Whalawalkar and H.V. Varde, for the Respondent

Judgement

Chagla, C.J.

(1) This is an appeal against the decision of the learned City Civil Court Judge Mr. Divan dismissing the plaintiff''s suit which was filed under S. 47 of the Presidency Small Cause Court Act.

(2) The undisputed facts are that the second respondent is the landlord and he let out the premises in suit prior to December 1947 to one Robert Nicolas. Robert Nicolas sublet the premises to the first respondent on 1-12-1947 and the first respondent gave leave and license to occupy these premises to the appellant in October 1948. As Nicolas did not pay rent to the landlord, the landlord filed a suit for ejectment and in February 1950 he obtained a decree. When he sought to execute the decree, the appellant obstructed and in these obstruction proceedings on 13-9-1950 an agreement was arrived at between the appellant and the second respondent by which the second respondent recognised the appellant as his tenant. The first respondent filed an application in the Small Causes Court under S. 41 contending that the appellant was his licensee, that he had terminated the licence,

and he was entitled to an order of ejectment. An order vas made in his favour and the appellant then filed the suit from which this appeal arises, alleging that the order obtained by the first respondent constituted a trespass and he was entitled to compensation for the trespass. This is the suit which the learned Judge dismissed and which necessitated this appeal.

(3) The contention urged by Mr. Lulla before us is that when the contractual tenancy of Nicolas terminated, either when the second respondent gave a notice terminating his tenancy or even when the decree for eviction was passed in February 1950, the sub-tenancy of the first respondent came to an end.

The licence given to the appellant by the first respondent was by virtue of his title that he was a sub-tenant. It is only that title that entitled him to give the licence and that title determined as soon as the tenancy of Nicolas came to an end, and therefore according to Mr. Lulla it was not competent to the first respondent to maintain an application under S. 41, nor could he have obtained an order under the provisions of Chapter VII of the Presidency Small Cause Courts Act, and the order having been wrongfully obtained the application constitutes a trespass and he is entitled to succeed. The answer given by Mr. Valawalkar is that although the contractual sub-tenancy of the first respondent determined, he became a statutory sub-tenant by reason of S. 14 of the Rent Act because at the date when the sub-tenancy was created the sub-tenancy was not illegal and that the sub-tenancy created before the Rent Act came into force was protected under S. 14. In order to decide which of these rival contentions is sound, we must look at the provisions of the relevant sections.

(4) The jurisdiction conferred upon the Small Causes Court under Chapter VII is a very special and limited jurisdiction. It entitles parties to recover possession by a summary procedure. No suit has to be filed; only an application has to be made no decree is passed; only an order for ejectment is passed. But the summary right to obtain possession can only be exercised strictly within the limits laid down by Chapter VII itself. There is nothing to prevent a party from obtaining possession in the ordinary courts of the land if he has a right to possession under the ordinary law. But when a party comes to the Small Causes Court under Chapter VII and makes an application, he must satisfy the Court that his application is maintainable and that he is entitled to the order as provided by that Chapter.

(5) Now, bearing this background in mind, what is emphasized by Mr. Lulla is the Explanation to Section 43, and that Explanation lays down that "if the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section." In other words, if the person in possession against whom an application is made establishes that the title of the applicant by virtue of which he obtained possession has come to an end or has determined then the applicant would fail to get the order of possession. As the

Explanation says, the occupant would be deemed to have shown cause within the meaning of the section and if he has shown cause then he would not be entitled to an order for possession. Turning to Section 46 which defines what constitutes trespass, the second paragraph of that section provides: "And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though the possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant." Section 47 gives the right to a party to challenge the application for possession made u/s 41 by filing a substantive suit and complaining of trespass, and if the plaintiff succeeds in such a suit, the decree in that suit supersedes the order of possession (if any) passed under Chapter VII. therefore, in effect and in substance, the suit filed by the party in occupation, although termed to be a suit for trespass, is really a suit challenging the application for possession made by summary procedure to the Small Causes Court under Chapter VII.

(6) What is urged by Mr. Valawalkar is that although the contractual tenancy of the first respondent might have determined, he was a statutory tenant and therefore at the time when he applied for the order he was entitled to the possession of the property. If that be so, the order which he has obtained cannot constitute trespass within the meaning of Section 46. The question tat we have to decide is whether for the purpose of construing the expression "entitled to the possession of such property" we have got to incorporate the Explanation to Section 43. The learned Judge below has taken the view that the Explanation to Section 43 is only intended for the Small Causes Court and not for the City Civil Court. We find it difficult to accept that view. If what we have just said is correct that the object of filing the suit u/s 47 is substantially to challenge the order passed by the Small Causes Court then it stands to reason that if by reason of the Explanation to S. 43 the applicant is not deemed to be entitled to possession and is not entitled to an order under Chapter VII, then it cannot be said that at the date when he made an application for the purpose of Section 46 he was entitled to the possession of the property under Chapter VII. But by reason of the Explanation to Section 43 it is clear that he is not entitled to an order for possession if the title, by virtue of which he claims possession, is determined. Therefore we must reconcile Section 43 and Section 46 and the only way was these two sections can be reconciled is by reading the Explanation to Section 43 into Sec 46. In other words, by reason of this reconciliation between the two sections the position in law would be that if an applicant cannot obtain an order for possession by reason of his title having determined and by reason of the Explanation to Section 43, then if he makes an application, such an application constitutes trespass and the occupant can file a suit and complain of that trespass and succeed in obtaining compensation.

(7) The other contention urged by Mr. Valawalkar is that strictly the title of the first respondent never determined; a contractual title merged into a statutory title; and

therefore even according to the Explanation to Section 43 there is no difficulty in the way of the first respondent obtaining an order for possession under Chapter VII. Now, there is a clear fallacy underlying that argument. The only right to possession on which Mr. Valawalkar''s client can rely is the statutory possession which the Rent Act affords him. But that statutory possession can only become a right when the contractual title has determined. It is precisely because the contractual title comes to an end that the statute steps in an gives protection to the tenant or the sub-tenant. Therefore it is said futile to urge that the title, by virtue of which the first respondent gave the license to the appellant, did not determine. It did determine, and the most that could be said is that on the determination of that title the sub-tenant became entitled to the statutory protection u/s 14 of the Rent Act.

(8) There is another aspect of the matter to which attention might be drawn. The protection given to a sub-tenant under S. 14 does not confer any title in land. It is not an interest in land or an estate in land which Section 14 creates. It is now well settled that the protection which the Rent Act gives to a tenant or a sub-tenant is a personal right, not a right in property, and what the Explanation to Section 43 contemplates is title and not a personal right. In any view of the case, the sub-tenant''s title came to an end and there was no title in substitution of that title. What came into existence is a personal right.

(9) There is also force in Mr. Lulla''s contention that it is anomalous and illogical to permit a person who is no longer in possession to assert that he is entitled to possession under Chapter VII of the Presidency Small Cause Courts Act because he has become a statutory sub-tenant. He is, if one can describe him so, a statutory sub-tenant not in possession, and a statutory sub-tenant not in possession seeks to protect his possession, as it were, by resorting to an application under Chapter VII. It has been pointed out to us that it may lead to serious hardships, difficulties and anomalies if a change in a title or a merger of a title would disentitle a person who gave a license or created a tenancy from proceeding under Chapter VII. Now, the reason for the Explanation to S. 43 is to prevent the Small Causes Court, which is a Court of summary jurisdiction, from inquiring into and investigating into questions of fact. If an application under Chapter VII can be maintained by a person not under the original title but under a different or subsequent title, then the Small Causes Court would have to go into questions of title, and that is exactly what the Legislature wanted to prevent. If Chapter VII was intended for simply applications by a person who has given a license or who has let out premises and who wants possession back, the application raising no question of title, then it is clear that it was not contemplated by the Legislature that under Chapter VII the Small Causes Court should go into difficult questions of title. Further, no question of hardship can possibly arise because a sub-tenant or a landlord or a tenant cannot maintain an application under Chapter VII by reason of the Explanation to Section 43. The fact that he cannot maintain an application under Chapter VII does not deprive him of his remedy at law. All that can be said is that he cannot get relief by a summary

procedure, but he could maintain a suit under the ordinary law in the ordinary Courts of the land, and therefore in coming to the conclusion that we are, we are not in any way depriving any person of any substantive right. The application of the Explanation to Section 43 at the highest will only act to the prejudice of the party only to this extent that he would have to file a substantive suit and not make an application under Chapter VII.

(10) In our opinion, therefore, in view of the facts of this case, the Small Causes Court could not have passed an order for possession in favour of the first respondent, inasmuch as the title, by virtue of which he gave a license to the appellant, had determined. If that be the correct position, then the application made in the Small Causes Court constituted trespass against which the appellant was entitled to complain.

(11) The result is that we must allow the appeal and set aside the order passed by the learned trial Judge.

(12) With regard to the question of compensation, the injury or the damage consists in the fact that the application constitutes a trespass upon the propriety right of the appellant. The compensation claimed is Rs. 100 which we think is not unreasonable. There will therefore be a decree for the plaintiff for Rs. 100 with costs throughout, costs to be paid by the first Respondent.

(13) Appeal allowed.