(1962) 07 BOM CK 0019

Bombay High Court

Case No: Civil Revision Application No. 1325 of 1961

Balkrishna Maruti Devgaonkar		APPELLANT
	Vs	
Saidanna Sayanna Billampalli		RESPONDENT

Date of Decision: July 24, 1962

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 15, 5
- Transfer of Property Act, 1882 - Section 108

Citation: (1963) 65 BOMLR 149 : (1963) MhLj 372 : (1963) MPLJ 372

Hon'ble Judges: Chandrachud, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Chandrachud, J.

This revisional application raises the question as to whether a person who derives title from a sub-tenant has a legal status, which can be upheld under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act (Act No. LVII of 1947). The property which is the subject-matter of the present dispute formerly belonged to one Ganpat, but on his death it devolved upon the present plaintiff as a legatee and executor under the will of Ganpat. The. plaintiff filed a suit against six persons for possession of the premises in their occupation on the ground that defendant No. 1 who was the original tenant bad sub-let the premises to defendant No. 2, that defendant No. 2 had sub-let the property to defendant No. 3, that defendant No. 3 had, in turn, sub-let the property to defendant No. 5 and that the several defendants wore profiteering by charging exorbitant rent to one another. The plaintiff also sought for possession on the ground that the premises were required by him bona fide for his personal use and occupation. Defendants Nos. 1 to 3 entered into a compromise with the plaintiff by application exh 41. dated July 1,

1958. The name of defendant No. R was deleted whereas defendant No. 4 was Found to have no concern with the property ai all. Defendant No. 5 was the lone defendant who contested the suit and his ease briefly was that he had derived title under defendant No. 3, who in turn claimed under defendants Nos. 1 and 2, and that, therefore, he, i.e. defendant No. 5, was lawfully in possession of the premises. He also contended that he was in possession of the premises since 1956, that in 1956 Ordinance No. 3 of 1959 was passed by virtue of which his possession was legalised and that he could not be evicted so long as he was ready and willing to pay rent unless, of course, the conditions on which a landlord can obtain possession of the premises were satisfied as laid down in the Rent Act. On merits, the contention of defendant No. 5 was that the landlord did not require the premises for his personal use and that greater hardship would he caused to him than to the landlord if a decree for eviction was passed against him.

2. The learned trial Judge held that defendant No. 1 was the tenant of the plaintiff, that defendant No. 2 was the sub-tenant of defendant No. 1, that defendant No.2 was a transferee from defendant No. 2 and that defendant No. 5 who, as I have said earlier, is the only ''contesting defendant, is a transferee from defendant No. 3. In fact, a finding that defendant No. 5 was a transferee from defendant No. 3 was arrived at on the admission of defendant No. 5 himself that he was put in possession of the premises by defendant No. 3. The learned Judge further held that the plaintiff had proved that he required the premises for his personal use and occupation but that greater hardship would be caused to defendant No. 5 if a decree in respect of the entire suit property was passed against him. At the trial defendant No. 5 had expressed willingness to surrender possession of six out of eighteen khans in his occupation. Relying on that offer, the learned Judge held that if a decree were passed against defendant No. 5 only with regard to six khans, no hardship would he caused to him. The learned trial Judge has, however, decreed the suit of the plaintiff wholly, on the ground that defendant No. 5 had no legal status which could be protected or recognized under the Rent Act, Defendant No. 5 filed an appeal against the judgment of the trial Court and the findings of the trial Court have been substantially confirmed by the learned Assistant Judge. The learned Assistant Judge has held that defendant No. 3 through whom defendant No. 5 claimed to be a sub-tenant, was himself a mere transferee from defendant No. 2 and that, therefore, defendant No. 3 could not pass any right, title or interest to defendant No. 5. It is on this ground that the learned Appellate Judge has held that defendant No. 5 had no legal, status. In view of that finding he has confirmed the decision of the trial Court.

3. The question which arises in this revisional application is whether in the circumstances mentioned above a decree in respect of the suit premises can be passed in favour of the plaintiff and as against defendant No. 5. If defendant No. 5 has a legal status which can be recognised or protected under the Rent Act, then a decree can be passed against him with regard to six khans, because the finding of

the trial Court is that though the plaintiff has proved that he requires the premises bona fide for his personal use and occupation, still, greater hardship would he caused to defendant No. 5 if a decree in respect of the entire premises were passed in favour of the plaintiff.

4. Mr. Marathe, who appears on behalf of the petitioner, contends that his client, defendant No. 5 must be deemed to be lawfully in possession of the premises by virtue of the provisions contained in Section 15 of the Bombay Rent Act. The legislative history of Section 15 is well-known. Sub-section (1) of Section 15, as it originally stood, provided that notwithstanding anything contained in any law, it shall not be lawful, after the coming into operation of the Rent Act, for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. It was, probably, found necessary to incorporate this provision in the Rent Act because, u/s 108, Clause (j), of the Transfer of Property Act, a tenant is entitled to sub-let the premises let out to him unless there is a contract to the contrary. On May 21, 1059, however, an Ordinance was passed which is Ordinance No. 3 of 1959. By that Ordinance Sub-section (2) was added to Section 15 and what the Ordinance provided was that notwithstanding anything contained in any judgment, decree or order of a Court or any contract, the bar against sub-letting, assignment or transfer of premises created by Sub-section (1) or contained in any contract was not to have any effect if the sub-lessee, assignee or the transferee had, entered into possession before May 21, 1959, and if he continued to be in possession on the date oil which the Ordinance came into force, i.e. on May 21, 1959. The argument advanced by Mr. Marathe is that the case of defendant No. 5 falls under the Ordinance which was subsequently replaced by Bombay Act No. XLIX of 1959 and that, therefore, defendant No. 5 is entitled to be recognised as a lawful tenant of the plaintiff. I am unable to accept this contention because all that the Ordinance has done is to obliterate the effect of the bur which was created by Sub-section (1) of Section 15. The bar which was created by Sub-section (1) was that notwithstanding anything contained in any law, no tenant could sub-let the premises or assign or transfer his interest therein. Sub-section (2), which was introduced by the Ordinance, must be read in the light of the provisions contained in Sub-section (1) and so read, it is only capable of the construction that whereas under Sub-section (1) an embargo was put on the tenant, against subletting, assigning or transferring the premises or his interest therein, that embargo was removed by Sub-section (2) retrospectively. By the Ordinance what was legalised was a sub-tenancy, an assignment or a transfer created by a tenant nit the teeth of the provisions contained in Sub-section (1). In the present case, if defendant No. 5 were to claim through defendant No. 1 who was the original tenant, it may have been possible to accept the contention of Mr. Marathe that a sub-tenancy in favour of defendant No. 5 must be held to be valid as it has been legalised by the Ordinance. But what is the right which defendant No. 5 claims in the present case? Admittedly, he does not claim under the tenant, viz. defendant No. 1,

but he claims under defendant No. 3, who in turn claims under defendant No. 2, who, in turn, is the sub-tenant of defendant No. 1. In one word, therefore, defendant No. 5 claims under a transferee of the sub-tenant of a tenant. It seems to mo difficult to take the view that the intention of the Legislature was not only to validate transfers and assignments by tenants but also to legalise every transfer and assignment effected by the sub-tenants or by transferees and assignees of sub-tenants. While dealing with this question, it is also important to call attention to the fact that Sub-section (2) which is introduced by the Ordinance of 1959 does not unconditionally legalise sub-tenancies, assignments and transfers. The conditions which are laid down in Sub-section (2) are that the sub-lessee, assignee or transferee must have entered, into possession of the premises before May 21, 1959, and he must further continue in possession till May 21, 1959. It is only if these conditions are satisfied that the bar created by Sub-section (1) can be deemed never to have had any effect. Sub-section (2) came into force on May 21, 1959, but defendant No. 3 had already given up possession of the premises under the application for compromise (exh. 41) dated July 1, 1958. If defendant No. 3 was a sub-tenant at all (and the Courts below have hold that he was not), it may have been possible for him to obtain protection, of the Ordinance if he himself was in possession on the date on which the Ordinance came into force. The consequence of the argument of Mr. Marathe must necessarily be that though defendant No. 3 could not avail himself of the protection conferred by the Ordinance by reason of the fact that he did not satisfy the, condition of continued possession till May 21, 1959, defendant No. 5, who claims from defendant No. 3, would be entitled to claim protection under the Ordinance. As I have stated earlier, the protection which is intended to be conferred by the Ordinance can be availed of only by persons who can be described as sub-lessees, assignees or transferees from the tenants and that too if they satisfy the two conditions mentioned above.

5. To meet this difficulty, Mr. Marathe urges that defendant No. 3 himself must be deemed to be a tenant and that, therefore, defendant No. 5, who claims from defendant No. 3, must be deemed to be a sub-tenant within the meaning of the Rent Act. In this behalf Mr. Marathe has called my attention to the definition of the word ''tenant'' in Section 5, Clause (II), Sub-clause (a) and (b). The term, ''tenant'' has been defined in Section 5, Clause (11) to mean a person by whom or on whose account Tent is payable and to include (a) such sub-tenants and other persons as have derived title under a tenant, before the date on which the Ordinance came into force, and (b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or to his predecessor who 1ms derived title before the date of the Ordinance. Defendant No. 5 is very clearly not a person by whom or on whose recount rent was payable because there is no privity of contract between him and the plaintiff. Mr. Marathe, however, argues that defendant No. 5 would be a tenant under the inclusive definition contained in Sub-clause (a) or Sub-clause (b) of Clause

(11) of Section 5 of the Act. What Sub-clause (a) provides is that a tenant includes a sub-tenant and other persons who have derived title under a tenant before a certain date. As I have stated earlier, defendant No. 5 is not n sub-tenant because a sub-tenant must necessarily mean a person who derives title from or under the tenant. Admittedly, defendant No. 5 does not claim through the tenant, and admittedly he claims under defendant No. 3 who himself was a transferee from defendant No. 2, who was a sub-tenant of the original tenant, defendant No. 1. It seems equally difficult to hold that defendant No. 5 can be a tenant within the meaning of Sub-Clause (b) of Clause (11) of Section 5, because what that sub-clause contemplates is that the person must, after the determination of the lease, remain in possession of the premises leased to him or to his predecessor. In the first place, it is plain from the language of Clause (b) that it applies only to statutory tenants and to those who derive title under statutory tenants, as for example, their heirs, legal representatives, executors or assignees. Secondly, in the present ease the premises admittedly are not leased to defendant No. 5, nor indeed were they leased to his predecessor, viz. defendant No. 3. Mr. Marathe contends that the word ''predecessor'' must, not be construed to mean ''immediate predecessor'' and that the word must be given the widest possible connotation so as to include any of the previous occupants. In the absence of anything to indicate that such a wide and artificial construction is a necessary implication of the language used in Sub-clause (b), it seems to me that only those persons will fall under Sub-clause (h) who, after the determination of the lease, continue in possession of the premises leased to them or to their immediate predecessors. As the premises are neither leased to defendant No. 5 nor to his predecessor defendant No. 3, defendant No. 5 cannot fall, under the inclusive definition contained in Sub-clause (b) of Clause (11) of Section 5 of the Bombay Rent Act.

6. For these reasons, I am of the opinion, that defendant No. 5 cannot seek protection under Sub-section (2) of Section 15 of the Rent Act. If defendant No. 5 has no legal status such as can he recognised under the Rent Act, then even though hardship may lie caused to him, if a decree in respect, of the entire premises is passed against him, there would be no alternative save to pass such a decree. The order passed by the Courts below will, therefore, be confirmed and the revisional application filed by defendant No. 5 will be dismissed with costs throughout. Rule discharged.