State Vs Kondaji Chimnaji Dhorge

Court: Bombay High Court

Date of Decision: Sept. 30, 1954

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 5

Citation: (1955) 57 BOMLR 171

Hon'ble Judges: Gajendragadkar, J; Chainani, J

Bench: Division Bench

Judgement

Gajendragadkar J.

1. This is a reference made to this Court by the learned Additional Sessions-Judge, Poona, and it raises a short question under the Bombay

Tenancy and Agricultural Lands Act, 1948. The lands in question originally belonged to the undivided family consisting of Pandurang and his father.

At the time of his father''s death'', Pandurang was a minor, and during his minority his uncle Kondaji managed his properties on his behalf. The

lands in question have been let out to Vithal Ranguji for several years on oral tenancy. The rent due from the tenant was recovered by Kondaji in

the past during the minority of Pandurang and it would appear that even after Pandurang became a major Kondaji still continued to manage the

properties and to collect the rent from the tenant. On August 18, 1951, Kondaji passed a receipt to Vithal and the present proceedings have been

commenced against Kondaji under the provisions of Section 81 of the Tenancy Act on the ground that the receipt which has been passed by

Kondaji to the tenant Vithal is not in the form prescribed by the Act. Kondaji pleaded that he was not a landlord within the meaning of the Act,

and though he did not dispute the allegation of the prosecution that the receipt given to the tenant was not in the prescribed form, he contended that

failure to comply with the provisions of Section 26, Sub-section (2), would not make him liable to be punished u/s 81 of the Act. The learned

Magistrate rejected this contention and found Kondaji guilty u/s 81(1) read with Section 26(2) of the Act. Accordingly he convicted him of the

said offence and sentenced him to pay a fine of Rs. 15, in default to suffer simple imprisonment for one week. This order was challenged by the

accused by a revisional application before the learned Additional Sessions Judge, Poona, and the learned Additional Sessions Judge was disposed

to take the view that, since the accused was not a landlord within the meaning of the Tenancy Act, he could not be held to have committed any

offence u/s 81 even though the receipt in question is not in the prescribed form. That is why he has made this reference to us and the short point

which arises for our decision on this reference is whether the accused can be said to have committed an offence u/s 81 of the Tenancy Act.

2. Before answering this question, it would be relevant to refer to the material provisions of this Act. Section 2, Sub-section (18), defines a

Tenant"" as meaning

...an agriculturist who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act.

This sub-section then adds that the word ""landlord"" shall be construed accordingly. In other words, there is no specific definition of the word

landlord"" given by the Act, and the only guidance we get in this matter is to be had from the Clause in Section 2, Sub-section (18), which says that

the word ""landlord"" shall be construed in accordance with the meaning of the word ""tenant"" which has been defined in that sub-section. Section 26,

Sub-section (1), provides that, in the absence of an express intimation writing to the contrary by a tenant every payment made by a tenant to the

landlord shall be presumed to be a payment on account of rent due by such tenant for the year in which the payment is made. Sub-section (2) then

imposes on the landlord the obligation to give a written receipt for the amount of rent at the time when such amount is received by him in respect of

any land in such form and in such manner as may be prescribed. It would be noticed that Sub-section (2) expressly provides that the landlord shall

give such a receipt. Then we turn to the provisions of the penal Section 81. Sub-section (1) of Section 81 penalises the contravention of any

provision of any of the sections, sub-sections or clauses mentioned in the first column of the Table appended to Section 81, and under this Table

failure to give written receipt for the amount of rent received in the form prescribed is punishable with a fine of Rs. 100. Here can be no doubt that,

if a landlord fails to give a written receipt to the tenant for the amount of rent paid by the tenant to the landlord in the form prescribed, he would

render himself liable to be punished u/s 81, Sub-section (1). The question is whether the same result would follow in a case where the receipt is

given, not by the landlord himself, but by some person acting on his behalf.

3. In the present case, there is no dispute as to the facts. The lands admittedly belong to Pandurang. It has been found that Pandurang attained

majority some time in 1949, so that there is no doubt that at the time when the receipt was passed Pandurang was a major and the receipt in

question has been passed in respect of rent paid by the tenant as regards Pandurang''s land. It is also common ground that during the minority of

Pandurang, and even after Pandurang became a; major, Kondaji''s management continued and the offending receipt has been passed by Kondaji.

Mr. Karnik, who appeared in these proceedings at our request as amicus curiae, has drawn our attention to the fact that in the receipt Kondaji has

used words '' which would suggest that he had a proprietory interest in the land in question. That no doubt is true. But, however Kondaji may have

described the property, there is no doubt that the property belongs to Pandurang and that Kondaji was acting as no better and no more than an

agent of Pandurang when he collected the rent from the tenant and passed a receipt to him. On these facts, can it be said that Kondaji, the agent of

Pandurang, has committed an offence inasmuch as he has not passed a receipt in the form prescribed by Section 26(2)? Mr. Karnik contends that,

in deciding this question, the representation made by Kondaji to the tenant cannot be regarded as irrelevant. He argues that Kondaji represented to

the tenant that he was the landlord, and acting on this representation he purported to recover the rent and the tenant paid the rent to Kondaji. Mr.

Karnik further suggested that just as estoppel operates against a tenant in the matter of the landlord''s title and the tenant is not allowed to dispute

the landlord''s title during the continuance of his tenancy, so by parity of reasoning similar estoppel should be brought into operation against the

agent of the landlord in the position of Kondaji. In support of this suggestion, Mr. Karnik invited our attention to the decision in E.H. Lewis & Son,

Ltd. v. Morelli. [1948] 2 All E.R. 1021. It appears that in this case defendant No. 2 had been let into the premises as a tenant by the plaintiffs and

when a dispute arose as to the tenancy rights the plaintiffs pleaded that they were not the owners of the property, but defendant No. 1 Morelli was.

In dealing with this contention, this is what Mr. Justice Norman has observed (p. 102.5):Ã¯Â¿Â½

So, here, if we had found that a tenancy was intended to be created in the second defendant in 1940 we should have held that the plaintiffs were

precluded from bringing forward their obligations to the first defendant, Morelli, or the term vested by them in him as an excuse to avoid the now

obligations which they would thus have incurred to the respondent.

The learned Judge added (p. 1025):Ã¯Â¿Â½

... Morelli, of course, could not be affected and might re-enter by title paramount, but, as between themselves and their tenant, we should have

held the plaintiffs irrevocably bound.

Even if this principle were to be applied to the facts of this case, it may, at best, show that Kondaji would be precluded from disputing the fact that

Vithal was a tenant of the land ; but the question of estoppel, in our opinion, is hardly of any assistance in deciding the question before us. We are

dealing with a penal provision in the Tenancy Act and the case against the accused is that for failure to comply with the requirements of Section

26(2) he has rendered himself liable to pay a fine. It is well settled that in dealing with penal statutes the words used in the penal sections must be

strictly construed. It is in the light of this principle that we have to decide whether the word ""landlord"" used in Section 26, Sub-section (2) can

reasonably be held to include the agent of the landlord or any other person acting on his behalf.

4. Now, there can be no doubt that Kondaji is not the landlord of the tenant. The title does not vest in Kondaji; the rent which he receives does

not belong to him and the impugned receipt has, in the eyes of law, been passed by him, not on his own account, but on account of his landlord

Pandurang. In our opinion""" it would be straining the language used in Section 26, Sub-section (2) to hold that the expression ""every landlord"" must

include, not only the landlord in question, but his agent or any other person acting on his behalf. In this connection, it is somewhat significant that in

the earlier Act of 1939 the provisions in the corresponding section, which was Section 22, were in a different form. Section 22, Sub-section (2) of

the earlier Act imposed an obligation on the landlord to pass a receipt, and Sub-section (3) of that section provided that any person who fails to

give a written receipt for the amount of rent received by him shall, on conviction, be punishable with a certain fine. In other words, whereas the

obligation to pass a receipt was in terms imposed upon the landlord, the persons who rendered themselves liable to be punished for failure to

comply with the said provisions were described as ""any person"" failing to comply with the material requirements. In Rex v. Narayan Gosavi Patil

(1948) Criminal Reference No. 93 of 1948, Weston and Chainani JJ., on September 15, 1948 (Unrep.). Mr, Justice Weston and my learned

brother had to consider the question as to whether the expression ""any person"" used in Sub-section (3) of Section 22 of the earlier Act helped to

widen the scope of the provisions so as to include, not only the landlord, but his agent as well. It would appear from the judgments delivered by

Mr. Justice Weston and my learned brother that they did not agree on the construction of the expression ""any person,"" Whereas Mr. Justice

Weston was disposed to take the view that the use of the words ""any person"" in Sub-section (3) of Section 22 expressed the intention of the

Legislature to penalise the landlord and his agent, my learned brother took a different view. The case was, however, decided on the ground that

the time within which a receipt should be passed had not been specified either in Sub-section (2) or Sub-section (3) of Section 22, and it appeared

that in the said case, even before the criminal process was issued against the landlord, he had passed a receipt to the tenant. It is unnecessary to

consider what the words ""any person"" in the earlier section really meant. I have referred to the words used in the corresponding section in the

earlier Act to emphasize the fact that, whereas in the earlier section the Legislature had used the words ""any person,"" which may conceivably give

rise to the construction that the agent was intended to be penalised by the provisions of the said section, those words have been now omitted and

the obligation and the liability has been confined only to the landlord u/s 26, Sub-section (2) of the Act of 1948. Therefore, in our opinion, there is

no difficulty whatever in accepting the view of the learned additional Sessions Judge that the would Ã¯Â¿Â½landlord"" used ins. 26, Sub-section (2),

must mean a landlord and nothing more. In support of this conclusion, we may also refer to the fact that in enacting the provisions of the Bombay

Rents, Hotel and Lodging House Rates Control Act (Act LVII of 1947), Legislature has defined the word ""landlord"" as including his agent u/s 5.

Sub-section (3).. and it is remarkable that though this definition in this Act was before the Legislature when it enacted the provisions of the present

Tenancy Act, the Legislature has not defined the word ""landlord"" as including his agent. That again shows that the Legislature did not intend to

penalise the agent of the landlord for failure to comply with the provisions of Section 26, Sub-section (2). We must, therefore, hold that the learned

Additional Sessions Judge was right in coming to the conclusion that even on the facts proved in the present case the accused is not guilty of the

offence charged.

5. We would accordingly accept the reference, set aside the order of conviction and sentence passed against the accused, and direct that the

accused should be acquitted, Fine, if paid should be refunded.