

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8395 OF 2022

Laxman @ Moreshwar Maruti Shinde
Adult, Occ. Nil, R/at Mahabaleshwar
Taluka Mahabaleshwar, Dist. Satara.

....Petitioner

V/S

Dinesh Gajanan Bhise
Adult, Occ. Business,
R/at : Mahabaleshwar,
Taluka Mahabaleshwar,
District Satara

....Respondent

Mr. Anil Anturkar, Senior Advocate i/b Mr. Shubham H. Misar *for Petitioner.*
Mr. Jaydeep Deo *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 11 SEPTEMBER 2024.

JUDGMENT:

1 Petitioner has filed this Petition challenging the judgment and decree dated 19 January 2022 passed by *Adhoc* District Judge-1, Satara dismissing Regular Civil Appeal No.248 of 2016 filed by him and confirming the eviction decree dated 4 August 2016 passed by Civil Judge Junior Division, Mahabaleshwar, in Regular Civil Suit No.40 of 2010 (Old Regular Civil Suit

No.248 of 1997).

2 Two rooms situated in House No.86, City Survey No.111/3 at Mahabaleshwar, Taluka Mahabaleshwar, District Satara are the suit premises. House property bearing No.86 was originally owned by late Shri Kondiram Bhise. Defendant's father Shri Maruti Raghu Shinde was inducted as a monthly tenant in respect of the suit premises. After death of Shri Kondiram Bhise, his brother Shri Gajanan Bhise claimed rights in respect of House Property No.86 and he was paid rent. After death of original tenant-Shri Maruti Raghu Shinde, Defendant claimed tenancy rights in respect of the suit premises and was paying rent to Shri Gajanan Bhise. Said Gajanan Bhise passed away in the year 1995 and after his death, his son being Plaintiff-Dinesh claimed rights in respect of house property No.86.

3 Plaintiff instituted Regular Civil Suit No.248 of 1997 (Old) in the Court of Civil Judge Junior Division, Mahabaleshwar seeking recovery of possession of suit premises from Petitioner/Defendant on the grounds of default in payment of rent, bonafide requirement, change of user and erection of permanent structure. Plaintiff also claimed arrears of rent of Rs.1,900/- from Defendant. The suit was contested by Defendant by filing Written Statement contending *inter alia* that he was paying rent in respect of the suit premises to Plaintiff's father Shri Gajanan Bhise till 1995. That original owner Shri Kondiba Bhise and Shri Gajanan Bhise did not issue rent receipts despite payment of rent. That after death of Shri Gajanan Bhise, Defendant offered

rent to Plaintiff, which he refused to accept. That the suit was lodged by taking disadvantage of non-issuance of receipts by creating artificial case of default. Defendant also denied the other grounds for eviction. The Written Statement was amended and Defendant pleaded that Plaintiff did not have right to demand possession of the suit premises since he does not have title in respect of the same. Both the sides led evidence in support of their respective claims. After considering the pleadings, documents and oral evidence, the Trial Court proceeded to decree the suit by judgment and order dated 4 August 2016 by accepting the ground of default in payment of rent, *bonafide* requirement, change of user and erection of permanent structure. Defendant was directed to handover possession of the suit premises to Plaintiff.

4 Defendant/Petitioner filed Regular Civil Appeal No.248 of 2016 before District Judge, Satara, challenging the decree of the Trial Court. The Appellate Court reversed the finding of the Trial Court on the issue of erection of permanent structure without the consent of the landlord. However, the Appellate Court upheld the grounds of *bonafide* requirement, change of user and default in payment of rent. The Appellate Court has accordingly dismissed Petitioner's Appeal by judgment and decree dated 19 January 2022, which is subject matter of challenge in the present Petition.

5 Mr. Anturkar, the learned senior advocate appearing for Petitioner would submit that Plaintiff-Respondent did not plead in the plaint that he is the landlord in respect of the suit premises. That the original landlord is Shri

Kondiram Bhise, who created tenancy in favour of Defendant's father, and there is nothing on record to indicate that Plaintiff acquired title in respect of the suit premises. That Defendant specifically questioned the title of Plaintiff in respect of the suit premises and he denied that he is the tenant of Plaintiff. That this aspect has been completely glossed over by the Trial and the Appellate Court. That in absence of establishment of landlord-tenant relationship the suit filed by Plaintiff could not have been entertained. Mr. Anturkar would refer to the definition of the term 'landlord' under section 5(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**) in support of his contention that the term landlord *inter alia* includes a person who receives or is entitled to receive rent in respect of any premises. Referring to the Written Statement, Mr. Anturkar would submit that the Plaintiff has refused to accept the rent and since he did not receive the rent, he would not be covered by definition of a term 'landlord'. That provisions of section 116 of the Indian Evidence Act, 1872 are not applicable in the present case as there is no denial to the title from the beginning of tenancy and what is questioned is Plaintiff's right to recover possession.

6 Mr. Anturkar would further submit that in absence of any foundational pleadings, Defendant attempted to lead evidence in support of his claim for title which is clearly impermissible in law. In support he would rely upon judgments of the Apex Court in ***Biraji @ Brijraji & Anr. vs. Surya Pratap & Ors***, Civil Appeal Nos.4883-4884 of 2017 decided on 3 November 2020 and ***Bachhaj Nahar vs. Nilima Mandal & Anr.*** Civil Appeal Nos.5798-5799 of 2008, decided on 23 September 2008. He would submit that in absence of

any pleading demonstrating status as landlord, Plaintiff's suit has erroneously been entertained, which ought to have been dismissed.

7 The Petition is opposed by Mr. Deo, the learned counsel appearing for the Respondent/Plaintiff. He would submit that Plaintiff had issued notice to the Defendant before filing the suit thereby intimating his status as landlord. That there is enough evidence on record for establishment of landlord-tenant relationship. That Defendant contest in respect of title is afterthought which was not raised during pendency of the suit. That in the final partition, the suit property has come to the share of Plaintiff. That landlord tenant-relationship is accepted by the Defendant. Mr. Deo would pray for dismissal of the Petition.

8 Having considered the submissions canvassed by the learned counsel appearing for parties and after going through the pleadings, evidence on record and findings recorded by the Trial and the Appellate Court, it is seen that suit is decreed on the grounds of *bonafide* requirement, change of user and default in payment of rent. Correctness of acceptance of those grounds is not seriously questioned by Petitioner/Defendant. The sheet anchor of Mr. Anturkar's submission is absence of landlord-tenant relationship between Plaintiff and Defendant. To consider this submission, it would be relevant to first consider the pleadings raised by Defendant. The Defendant raised following pleadings in paragraph 9 of his original unamended Written Statement:

“प्रत्यक्ष वस्तुस्थिती अशी आहे की, प्रतिवादीचे वडील श्री. मारुती राघु शिंदे यांनी वादीचे काका कोंडीराम भिसे यांचेकडून धंद्यासाठी म्हणून सुमारे ५० वर्षांपूर्वी भाड्याने घेतली व त्या प्रमाणे प्रतिवादीचे वडील सदर मिळकतीचे भाडे श्री.

कोंडीराम भिसे यांना देत असत व सदर प्रतिवादीचे वडीलांचे मृत्यूनंतर प्रतिवादी प्रथम कोंडीराम भिसे व त्यानंतर वादीचे वडील श्री. गजानन भिसे यांना देत असत. सदर दावा मिळकतीचे सर्व भाडे प्रतिवादी वादीचे वडील श्री. गजानन भिसे यांना त्यांचे हयातीपर्यंत नियमितपणे देत होते. वादीचे वडील गजानन भिसे १९९५ साली मयत झाले आहेत. तो पर्यंतचे सर्व भाडे प्रतिवादीने त्यांना दिलेले आहे. प्रथमपासून श्री. कोंडीराम भिसे व त्यानंतर वादीचे वडील श्री. गजानन भिसे यांनी भाडे मिळाल्याच्या पावत्या प्रतिवादीस व त्यांचे वडीलास दिलेल्या नव्हत्या. व नाहीत. केवळ विश्वासावर प्रतिवादीने सर्व भाडे श्री. गजानन भिसे यांना त्यांचे हयातीपर्यंत दिलेले आहे. वादीचे वडीलांचे मृत्युपासून प्रतिवादीने वारंवार प्रयत्न करूनही वादीने भाडे देण्याचे नाकारले आहे. केवळ प्रतिवादीस भाड्याच्या पावत्या दिलेल्या नाहीत याचा गैरफायदा घेवून वादी २०९ महिन्यांचे भाडे थकले आहे असे म्हणत आहे. प्रत्यक्षात प्रतिवादीकडे केवळ १ ऑक्टोबर १९९५ पासूनचे भाडेबाकी आहे व सदरचे भाडे प्रतिवादीने वादीस मनिऑर्डर पाठविले आहे व त्यामुळे प्रतिवादी डिफॉजेटर झालेला नाही. तसे प्रतिवादीकडे २०९ महिन्यांचे भाडे थकलेले नाही.”

9 Thus Defendant's pleaded is that his father was inducted by Shri Kondiram Bhise (Plaintiff's uncle) as monthly tenant in respect of the suit premises. That after Shri Kondiram Bhise's death, rent in respect of the premises was being paid to Kondiram's brother Gajanan Bhise till his death in the year 1995. That both Kondiram as well as Gajanan, while accepting rent from the Defendant, did not issue rent receipts. After Gajanan's death, Defendant repeatedly attempted to pay rent to Plaintiff which he refused to accept.

10 Mr. Anturkar reads the above pleadings to mean refusal on the part of Plaintiff to accept rent thereby excluding him from definition of the term 'landlord', which includes a person who receives or is entitled to receive the rent. According to him, since Plaintiff did not actually receive the rent, it was necessary for him to plead and prove that he was at least entitled to receive the rent by virtue of his title in respect of the suit property.

11 By now, it is well settled position of law that in a suit filed for recovery of possession, it is not necessary that the landlord should also be the owner of premises. All that needs to be established is existence of landlord-tenant relationship. Reference in this regard can be made to the judgment of the Apex Court in *K.D. Dewan vs. Haribhajan S. Parihar*¹ in which the Apex Court has held in paragraphs 6, 7 and 8 as under:

“6. The short question that arises for our consideration is, what is the import of the word “landlord” in clause (c) of Section 2 of the Act and whether the respondent has rightly been held to be the landlord and entitled to seek eviction of the appellant.

7. The said provisions reads as follows :

" 2.(c): ‘landlord’ means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;"

8.A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord : (1) any person for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sublets any building or rented land in the manner authorised under the Act and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of “landlord”, Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). **To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is**

1 (2002) 1 SCC 119.

also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.”

(emphasis added)

12 Similarly in *R.S. Grewal and others vs. Chander Parkash Soni & Anr.*² the Apex Court has followed the judgment in *K.D. Dewan* (supra) and has held in paragraphs 17 and 18 as under:

“17. This submission cannot be accepted both as a matter of first principle and having regard to the precedent on the subject. The expression ‘landlord’ is defined in Section 2(c) of the East Punjab Urban Rent Restriction Act 1949 thus:

“**2. Definitions.-** In this Act, unless there is anything repugnant in the subject or context –

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(c) ‘**landlord**’ means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person, from time to time, deriving title under a landlord;”

18. **A landlord within the meaning of Section 2(c) is not necessarily the owner of the property.** The definition of the expression ‘landlord’ is relatable to an entitlement to receive rent in respect of any building or rented land. The inclusive definition of ‘landlord’ under Section 2(c) would take in its sweep Shiv Dev Kaur who held a life interest in the property. This position in law has been explained in a decision of a two Judge Bench of this Court in *K.D. Dewan v Harbhajan S. Parihar*, where it was held thus:

XXXX

XXXX

(emphasis added)

13 Thus in a Rent Act Suit, it is not necessary for the Plaintiff to prove that

² (2019) 6 SCC 216.

he is the owner in respect of the suit premises. All that is required to be established is existence of landlord-tenant relationship. Sub-section 3 of section 5 of the Bombay Rent Act, which governed the present suit, defined the term 'landlord' as under:

“5. Definitions.

(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant, a tenant who has sub-let any premises, [and also includes in respect of a licensee deemed to be a tenant by section 15A, licensor who has given such license, and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A), deemed to be a tenant by section 15B, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996.”

14 Thus a person who receives or is entitled to receive rent in respect of any premises either for himself or for benefit of other person becomes a landlord. In the present case, there is no dispute to the position that the Defendant is a tenant in respect of the suit premises. The fact that the Defendant admits his status as tenant would obviously mean that there has to be a landlord. Plaintiff admits relationship as a landlord with Shri Kondiram Bhise and his brother Shri Gajanan Bhise in paragraph 9 of the Written Statement. He admits that the rent has been paid to Shri Kondiram Bhise and Shri Gajanan Bhise. So far as the Plaintiff is concerned, who is son of Shri Gajanan Bhise, Defendant has averred in his Written Statement that ‘वादीचे वडिलांचे मृत्युपासून प्रतिवादीने वारंवार

प्रयत्न करूनही वादीने भाडे घेण्याचे नाकारले आहे. (After death of Plaintiff father, Defendant repeatedly made attempts to pay rent to Plaintiff, who refused to accept the same.)

15 Thus the Defendant has specifically admitted he desired to pay rent to Plaintiff and that he made efforts to pay the same to Plaintiff. This averment in the Written Statement contains a clear admission that Plaintiff was entitled to receive rent as per the belief of Defendant himself. Since Defendant was willing to pay rent to Plaintiff, existence of landlord-tenant relationship is clearly admitted. In my view, this is sufficient for maintaining ejectment suit filed by the Plaintiff and it is not at all necessary for the Plaintiff to establish that the suit premises came to his share in the partition or that he is the owner in respect of the suit premises.

16 During pendency of the suit Defendant got wiser and raised following pleading in paragraph 9A of the amended written statement:

“सदर प्रतिवादी हे मुळचे कोंडीरामचे भांडेकरु आहेत. वादीस दावा मिळकती बाबत मालकी नसलेले कब्जा मागणीचा अधिकार नाही. त्यामुळे ही दावा काढून टाकणेस पात्र आहे.

(Present Defendant is original tenant of Kondiram. Since Plaintiff is not the owner of suit premises, he is not entitled to seek recovery of its possession. Hence, the suit is liable to be dismissed.)

17 Thus having virtually admitted existence of landlord-tenant relationship in paragraph 9 of the Written Statement, Defendant sought to create a contest with regard to title of the Plaintiff in respect of the suit premises by raising following pleading in amended paragraph 9A of the Written Statement:

“९ अ) तसेच या मिळकतीचे संदर्भात सातारा येथील म. सिव्हील जज्ज सिनिअर डिव्हीजन सो. यांचे कोर्टात स्पे. दि. मु. नं. / हा वाटपासाठी दाखल केला होता. सदर दाव्यात मूरलीधर तुकाराम भिसे हे वादी होते. व मधूकर तुकाराम भिसे ज्यामध्ये वादी ही पक्षकार होता. असे सर्वजण प्रतिवादी होते. सदर दाव्याचे कामी स्पेशल दरखास्त नंबर ५०/२००५ ही मूळ वादी मूरलीधर तुकाराम भिसे यांनी सातारा येथील मे. सिव्हील जज्ज सिनिअर डिव्हीजन सो. यांचे कोर्टात दाखल केली होती. सदर दरखास्तीप्रमाणे वाटप होवून सदर दाव्यातील मिळकत ही मधूकर तुकाराम भिसे यांचे वाटणीस घालणेत यावी असे कमिशन सो. यांनी आपले कमीशन रिपोर्ट मध्ये सुचविणेत आले आहे. सदर प्रतिवादी हे मुळचे कोंडीरामचे भाडेकरू आहेत. वादीस दावा मिळकतीबाबत मालकी नसलेने कब्जा मागणेचा अधिकार नाही. त्यामुळे ही दावा काढून टाकणेत पात्र आहे.

18 In my view the said contest sought to be created by Defendant was entirely unnecessary once existence of landlord-tenant relationship was admitted by the Defendant.

19 Defendant has copied the pleadings in paragraph 9 in his Affidavit-of-Evidence and in that sense, he has admitted the factum of attempts being made for payment of rent to the Plaintiff in evidence as well.

20 Mr. Anturkar's contention that Plaintiff's refusal to accept rent would exclude him from definition of term 'landlord'. I am unable to agree. What is important is not the actual act of payment or receipt of rent. What is material is acknowledgment of status of Plaintiff as someone who is entitled to receive

rent by the Defendant-tenant. Contents of paragraph 9 of the Written Statement would leave no manner of doubt that Defendant accepted Plaintiff as his landlord which is the reason why he made attempts for payment of rent to him. Therefore, mere alleged refusal of rent by Plaintiff would not exclude him from definition of the term 'landlord'.

21 Though it was really not necessary for Plaintiff to demonstrate his title in respect of the suit premises, Plaintiff has filed Affidavit in the present Petition demonstrating that the suit premises have come to his share in the partition. It is pointed out that in the family partition the suit premises are allotted to the heirs of Shri Vishwanath Bhise in which Plaintiff and his nephew Shri Ganesh Bhise have undivided share. It is not really necessary to delve deeper into the issue of title in view of accepted position by Petitioner/Defendant about attempts made for payment of rent to the Plaintiff.

22 Mr. Anturkar's reliance on judgments of Apex Court in ***Biraji @ Brijraji & Anr.*** (supra) and ***Bachhaj Nahar*** (supra) has no relevance to the present case since it was not necessary for Plaintiff to prove his title to the suit premises. It was not necessary for him to either incorporate any foundational pleadings in the plaint with regard to claim for title and therefore the issue of permissibility to lead evidence in absence of pleadings becomes irrelevant. Defendant himself has pleaded his act of offering rent to the Plaintiff, which amounts to clear admission of existence of landlord-tenant relationship. In my view therefore, the whole controversy sought to be created by Defendant in respect

of Plaintiff's title to the suit premises was absolutely unnecessary.

23 So far as the grounds of eviction are concerned, there are concurrent findings by the Trial and the Appellate Court on the issues of default in payment of rent, *bonafide* requirement of Plaintiff and change of user. No serious error is pointed out to my notice in the said concurrent findings by Mr. Anturkar, who is fair enough in admitting that this Court cannot interfere in such concurrent findings in exercise of writ jurisdiction under Article 227 of the Constitution of India in absence of any grave or palpable error.

24 After considering the overall conspectus of the case, I do not find any valid reason to interfere in the impugned decrees. Writ Petition is accordingly **rejected**.

(SANDEEP V. MARNE, J.)

25 After the order is pronounced, Mr. Anturkar would pray for three months' time to vacate the suit premises. The request is opposed by Mr. Deo. Considering the facts and circumstances of the present case, Petitioner is granted time of three months to vacate the suit premises, subject to filing of usual undertaking in this Court within three weeks from today.

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(SANDEEP V. MARNE, J.)