

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO.1678/2013

Acharya Narayan Janardhan

... Appellant

V/s.

Farida Bhanu Begam

... Respondent

Ms. Sarika Mehra i/b. L. J. Law for the Appellant
Mr. Mohamed I. Ali for the Respondent.

CORAM: K.K. TATED, J.
DATED : JULY 22, 2015

JUDGMENT :

1. Heard the learned counsel for the parties. In the present proceedings, this court (Coram : R. G. Ketkar,J.) passed order dated 30/06/2014 issuing notice to the Respondent stating that if time permits, the matter would be decided finally at the stage of admission itself.
2. Hence, by consent of the parties, First Appeal is taken up for final hearing at the stage of admission.
3. For the sake of convenience, the parties will be referred to as per their nomenclature in the plaint i.e. Appellant – as Plaintiff and Respondent – as Defendant No.1.

4. The Plaintiff has not added Defendant Nos.2 and 3 as party in the present appeal.

5. This appeal is preferred by the Plaintiff challenging the judgment and decree 17/03/2012 passed by the Bombay City Civil Court, Mumbai in Short Cause Suit No.2072/2000 (said suit) holding that in view of section 33 of the Maharashtra Rent Control Act, 1999 (said Act), the civil court has no jurisdiction to entertain the suit.

6. In the present proceedings the Plaintiff filed the said suit in Bombay City Civil Court, Mumbai for declaration that the transfer of tenancy rights in respect of the suit premises i.e. Room No.4B/4 and 4B/5 situated on the first floor of Karanjia Building, 376A, Grant Road, Mumbai – 400 007 (hereinafter referred to as the suit property) was illegal, null and void and Defendant No.1 be directed to hand over vacant and peaceful possession of the suit property i.e. Room No.4B/4 and 4B/5. The Trial Court, after hearing both sides and considering the evidence on record, held that the Bombay City Civil Court, Mumbai has no jurisdiction to try and entertain the present suit. Hence, the First Appeal.

7. The learned counsel for the Plaintiff submits that the Trial Court erred in coming to the conclusion that the Civil Court has no jurisdiction to entertain the suit in view of section 33 of the said Act. She further submits that the Trial Court erred in not appreciating that the plaint does not disclose any relationship of landlord and tenant between the parties. Hence, the civil court has jurisdiction to entertain

and decide the suit. She further submits that the Trial Court erred in not appreciating the fact that the Plaintiff has been in peaceful possession of the suit premises since 1976. She further submits that the Trial Court ought to have decided the suit on its own merits instead of dismissing on a preliminary issue about jurisdiction of the civil court. Hence, the judgment and decree passed by the Trial Court be set aside and the Short Cause Suit No.2072/2000 filed by the Plaintiff be made absolute in terms of prayer clause (a).

8. On the other hand, the learned counsel for the Defendant No.1 vehemently opposed the First Appeal. He submits that the Plaintiff has made a specific averment in the plaint that the suit premises is transferred in the name of Defendant No.1 as a tenant. He further submits that even prayer clause (a) of the plaint is for declaration that the suit premises is transferred in the name of Defendant No.1 as a tenant, is null and void and same be set aside with direction to Defendant No.1 to handover vacant and peaceful possession of the same to the Plaintiff. He submits that bare reading of the plaint as well as prayer clauses of the suit shows that the Plaintiff is claiming relief against the Defendant No.1 under the said Act. Hence, the Trial Court rightly held that in view of section 33 of the said Act, the civil court has no jurisdiction to entertain and try the present suit.

9. The learned counsel for Defendant No.1 further submits that the First Appeal, as it is filed by the Plaintiff without joining Defendant Nos.2 and 3 is against justice, equity and good conscience and same is liable to be dismissed with costs.

10. Heard the learned counsel for the parties at length. In order to consider the issue involved in the present appeal, it would be proper to reproduce the prayer clauses made by the Plaintiff in said suit, which read thus:

“(a) that it may be declared that the transfer of the tenancy rights in respect of the premises is illegal, null and void and Defendant No.1 has no right in respect of the said premises i.e. room No.4B/4 and 4B/5 and Plaintiff's rights to the possession of the said room No.4B/4 and 4B/5 cannot be disturbed.

(b) that the Defendant No.1 and/or his agent and servant be restrained by an order of perpetual injunction of this Hon'ble Court from disturbance to the possession of the Plaintiff in respect of the suit premises as described in Exhibit -A hereto; premises on first floor, Room No.4B/4 and 4B/5 consisting of two rooms situated at Karanja Building, 376A, Grant Road, Bombay – 400 007.

(c) that pending the hearing and final disposal of the suit the Defendant themselves, their agents, servant be restrained by an order of injunction of this Hon'ble Court from disturbing the possession of the Plaintiff in respect of the said room i.e. 4B/4 and 4B/5

(d) for cost of the suit. “

It would also be appropriate to reproduce paragraph 7 of the plaint, which reads thus:

“7. The Plaintiff states that in or about second week of March, 2000 to his great shock and surprise that Defendant No.1 came with few persons and started threatening the Plaintiff and his family to vacate the said room Nos.4B/3, 4B/4 and 4B/5 and was allegedly claims tenancy in respect of the said suit premises i.e. room Nos.4B/3, 4B/4 and 4B/5, possession whereof has been handed

over to the Plaintiff by the person entitled to occupy the same. The Plaintiff therefore has also filed the police complaint at D.N.Road Police Station. The Plaintiff states that he is neither aware of nor have been informed either by the Defendant Nos.2 & 3 about the transfer of tenancy as allegedly claimed by the Defendant No.1. The Plaintiff is apprehending that now the Defendant No.1 harassing him and his family member to vacate the said suit premises i.e. room Nos.4B/4 and 4B/5 on the said alleged transfer of the tenancy in respect of the suit premises i.e. room Nos.4B/4 and 4B/5 ground. The Plaintiff states that even if it is presumed there the tenancy allegedly have been created in favour of Defendant No.1 in respect of the suit premises to said transfer is totally illegal, null and void as the Defendant No.2 has no right to transfer the said premises in favour of the Defendant No.1 as the rent receipt in respect of the said premises i.e. Room Nos.4B/4 and 4B/5 has never been transferred in the name of the Defendant No.2 by the Defendant No.3. The Plaintiff states that he is in possession of the said room since last 20 years and his possession has never been disturbed by either said tenants or by Defendant Nos.2 and 3 at any point of time therefore the Plaintiff is entitled to continue to be in possession of the said room i.e. room Nos.4B/4 and 4B/5.”

11. Considering the submissions made by the learned counsel for the parties, the issue involved in the present appeal is; “whether the civil court has jurisdiction to try and entertain the present suit”, which I answer in the negative, for the reasons mentioned in the foregoing paragraphs.

12. Bare reading of paragraph 7 of the plaint as well as prayer clauses shows that the Plaintiff is contending that the suit premises transferred in the name of Defendant No.1 by the owner Defendant No.3, is illegal and same to be set aside. This itself shows that the Plaintiff is disputing the tenancy rights created in favour of Defendant No.1 by Defendant No.3. If there is dispute about tenancy right

between the parties in view of section 33 of the said Act, the Small Causes Court at Mumbai has exclusive jurisdiction to try and entertain the present suit. These facts are considered by the Trial Court at the time of deciding the additional issue in paragraph 14 to 16. The Trial Court held that in view of section 33 of the said Act, the civil court has no jurisdiction to entertain the suit as it is filed by the Plaintiff. The Plaintiff is claiming declaration that the tenancy transferred in the name of Defendant No.1 in respect of the suit property is null and void. If that is the case, same is squarely covered by section 33 of the said Act.

13. In view of the above mentioned facts and circumstances of the case and in view of section 33 of the said Act, I find no fault with the impugned judgment and decree passed by the Trial Court. Hence, the First Appeal stands rejected.

(K.K. TATED, J.)