

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(CIVIL APPELLATE JURISDICTION)

SECOND APPEAL NO. 431 OF 1993

Saraswatibai Dnyanoba Paigude,
since deceased by her legal heir,
Keshav Dnyanoba Paigude, adult,
Occ. Service, residing at 444,
Shaniwar Peth, Pune-411030.

APPELLANT
(Org. Plaintiff)

...VERSUS...

Shrikant Baburao Dhamale,
R/o. At Post Shere,
Tah. Mulshi, Distt. Pune,
now residing at 444,
Shaniwari Peth, Pune-411 030..

RESPONDENTS
(Org. Defendants)

Shri Madhav Jamdar, Advocate, for appellant
None for respondent.

CORAM: R. K. DESHPANDE, J.
DATE : 6th AUGUST, 2015 .

ORAL JUDGMENT

1] The trial Court passed a decree in Regular Civil Suit No. 1037 of 1981 on 16.12.1987, directing the defendant to hand over the vacant possession of the room prescribed in para 1 of the plaint to the

plaintiff. The lower appellate Court has reversed the decree passed by the trial Court on 20.04.1992 in Regular Civil Appeal No. 247 of 1988. Hence, the original plaintiff is before this Court in this second appeal.

2] The plaintiff came before the Court with a case that her husband Dnyanoba Paigude was the tenant in respect of the suit property and the defendant was a son of step daughter of Dnyanoba. The defendant was permitted to reside in the suit property as a gratuitous licensee. He assumed the possession of the property and did not vacate it, therefore, the suit was filed for recovery of possession. The defendant denied the claim of the plaintiff and submitted that he himself was the tenant in respect of the suit property being the family member of Dnyanoba Paigude.

3] The trial Court recorded the finding that the defendant was the trespasser and he failed to establish that he was residing with his mother in the suit property prior to the death of the plaintiff's

husband, as the family member. The lower appellate Court held that the dispute is regarding the status as a tenant and therefore, the civil Court had no jurisdiction to entertain, try and decide the suit as the question involved was required to be decided by the Court of Small Causes under the Provincial Small Cause Court Act.

4] On 4th January, 1994, this Court admitted the second appeal and the order passed is reproduced below;

This appeal involves substantial question of law as to interpretation and application of Section 5(11)(c) of the Bombay Rent Act, 1947, having regard to the facts of the case. This Appeal also involves another substantial question of law as to the jurisdiction of Civil Court to try the suit where on the basis of averments made in the plaint, the Defendant is alleged to be a trespasser. The Appellate has formulated the substantial question of law in Memorandum of Appeal vide ground Nos. 1, 2, 3 and 7.

Appeal is therefore admitted.

5] Since the question involved is about interpretation of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the relevant extract of the said provision is

reproduced below.

"5. Definitions .

In this Act unless there is anything repugnant to the subject or context, -

.....

.....

(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes, -

.....

.....

(c)(i) in relation to any premises let for resident, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court".

In terms of Section 5(11)(c)(i) reproduced above, in a case where the tenant dies, any member of the tenant's family residing with him at the time of his death, becomes original tenant. If such family member is found to be residing with the original tenant, the question of other legal heirs of the deceased becoming tenant, would not, in such case arise for the reason that such person would be entitled to become a tenant in the absence of any

family member of the original tenant.

6] In the present case, the original tenant was Dnyanoba, who died on 08.09.1975. The Plaintiff is the widow of Dnyanoba and it is, therefore, presumed that she was staying along with Dnyanoba at the time of his death in the suit property and this fact is not disputed. The defendant is the son of step daughter of the tenant Dnyanoba, even if considered to be the heir, shall not become a tenant. In view of this, even if the evidence is brought on record to show that the defendant was staying along with the deceased at the time of his death, he would not become a tenant in respect of the suit property. The lower appellate Court has, therefore, committed an error of law in holding that the defendant had become the tenant in respect of the suit property under Section 5(11)(c)(i) of the said Act and therefore, the jurisdiction of the civil Court to entertain, try and decide the suit was completely barred and that the suit was required to be filed in the Small Causes Court under the provisions of the Provincial Small Cause Court Act, 1880. The question

of law framed is, therefore, answered accordingly.

7] The necessary consequence of answering the aforesaid question of law is that the judgment and order passed by the lower appellate Court on 20.04.1992 in Regular Civil Appeal No. 247 of 1988 cannot be sustained. It is, therefore, quashed and set aside and the decree passed by the trial Court on 16.12.1987 in Regular Civil Suit No 1037 1981 is restored. No order as to cost.

Consequently, the civil application, if any, does not survive.

JUDGE

Rvjalit