

Behram Guard	...	Petitioner
Vs.		
Hormuzd Baug Charities and others	...	Respondents

CORAM : R. G. KETKAR, J.
DATE : JUNE 29, 2016

Not on Board. At the request of Mr. Ghadigaonkar, taken up for admission.

2. Heard Mr. Ghadigaonkar, learned Counsel for petitioner and Ms Irani, learned Counsel for respondents at length. Ms Irani assures that within one week from today, she will file appearance on behalf of respondents.

3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 03.05.2016 passed by the learned Judge presiding over Court Room No.9 of the Court of Small Causes at Bombay below exhibit-57 in R.A.E.Suit No.209/351 of 2011. By that order, the learned trial Judge allowed the application made by the original plaintiff No.2 seeking inspection of the suit premises by the plaintiff along with their Architect and to have report thereof.

4. In support of this Petition, Mr. Ghadigaonkar submitted that application exhibit-57 was made by plaintiff No.2 - Feroze C. Titina.

He invited my attention to order dated 19.10.2013 passed by the Deputy Charity Commissioner, Greater Mumbai Region, Mumbai below exhibit-13 in Change Report No.DYCC/2340/2007 in the matter of Hormuzd Baug Charities (plaintiff No.1). By that order, the Deputy Charity Commissioner allowed the application filed by the plaintiff No.2-Feroze Titina for substituting his name in the place of deceased reporting trustee, Sohrab Jamshed Irani. While allowing the application, Deputy Charity Commissioner made it clear that the said substitution shall only be for prosecuting the matter and it would not give any right, title or interest to the applicant (plaintiff No.2) as a trustee of a plaintiff No.1 Trust. Relying upon this order, Mr. Ghadigaonkar submitted that plaintiff No.2 could not have posed himself as a trustee and made application exhibit-57 for inspection of the suit premises along with the Architect. He further submitted that by way of present application, plaintiffs seek to collect evidence through the machinery of the Court. He, therefore, submitted that even on this count, the learned trial Judge was not justified in allowing the application.

5. On the other hand, Ms Irani supported the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that plaintiffs have instituted Suit against the petitioner, who is defendant No.2 and others. One of the grounds of eviction is additions and alterations of permanent nature without the consent of the plaintiffs as contemplated by Section 16(1)(b) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Section 28 of the Act provides that the landlord shall be entitled to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier. Mr. Ghadigaonkar submitted that in any

case Section 28 does not permit inspection of the premises along with the Architect. It is not possible to accept this submission. In the case of ***Kamlabai Laxman Mutraj Vs. Bherumal Verimal Haran, 2009 (2) Mh.L.J. 213***, the learned Single Judge of this Court observed in paragraphs 5, 6 and 7 thus,

“5. I am of the view that the Inspection just cannot be a mere formality of a visual inspection of the premises. It is always with some purpose and intention. The landlord in a given case may take with him the competent person including architect or a person who can record the condition of the premises which includes the Commissioner appointed by the Court or such other person. Once there is a clear and specific provision provided under the Mah.Rent Act, the general provision of appointment of C.P.C. cannot be read into it to restrict the right of the Landlord to inspect the premises. There may be joint inspection also.

6. In this background, in such proceedings when the landlord moved the application for appointment of Commissioner for proper measurements and inspection of the premises, it just cannot be treated an application as contended under Order 26 Rule 1 of the CPC only.

7. In absence of Section 28, the submission as raised could have been taken note of, in view of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare & Ors. 2001(2) Mh.L.J. 959, but considering the scheme of Mah. Rent Act, specially the Section referred above, I see there is no reason to restrict the landlord's right to inspect the premises though the court Commissioner as done in the present case. Such report may be subject to challenge, unless agreed or approved by the other side.

7. Admittedly, the application was opposed by the other side. Now, therefore, the formality of proper notice to the tenant is also over. The Court in the facts and circumstances of the case, as granted such application and appointed the Commissioner, I see there is no reason to interfere with the said order.”

7. As far as the contention based on order dated 19.10.2013 below exhibit-13 passed by the Deputy Charity Commissioner is concerned, perusal of paragraphs 6 and 7 of the order dated 17.12.2015 below exhibit-36 in Change Report No.DYCC/2138/2007 shows that plaintiff No.2 made application exhibit-20 for adding him as an applicant in place of Shorab Irani, who died on 27.03.2012. Application exhibit-20

was allowed and plaintiff No.2 was allowed to lead evidence and his prayer for addition of his name as applicant instead of Shorab Irani was also allowed.

8. While passing the impugned order, the learned trial Judge has considered this aspect in paragraph 4 of the impugned order. It was observed that even if the status of plaintiff No.2 as a trustee is in dispute, still, ownership of property by the Trust is not disputed by the defendants. The inspection will be carried out on behalf of the Trust and not individually by the plaintiffs. The learned trial Judge referred to Section 28 of the Act and allowed the application. In the light of the decision of this Court in the case of **Kamlabai Laxman Mutraj** (*supra*), I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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