

Sequeira

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

WRIT PETITION NO. 818 OF 2000

Shri Gopinath Ramnivas Gupta (Baniya)
Age 72 years, Occupation Business,
Resident of 59, A-Ward, Bhangarwadi,
Lonavala, Taluka Maval,
District Pune.

- Since deceased through his legal heirs
and representatives :

1(a). Smt.Jamnabai Gopilal Gupta,
age 68 years,

1(b). Ganesh Gopilal Gupta,
Age 48 years,

1(c). Prakash Gopilal Gupta,
Age 36 years,

1(d). Anil Gopilal Gupta,
Age 34 years,
All residing at Moongi Chawl,
House No.51 (old) near Ganpati
Mandir, Bhangarwadi, Lonavala,
Taluka Maval, District : Pune.

.. Petitioner
(Orig. Defendant)

Versus

Shri Narayan Gopal Karhadkar,
Age 66 years, Occupation Retired,
Resident of H-59, A-Ward,
Bhangarwadi, Lonavala,
Taluka Maval, District Pune.

.. Respondent

Ms.Anita Agarwal, for the Petitioner.
Mr.Venkatesh Shastry, for the Respondent

***CORAM : N.M.Jamdar, J.
Friday, 9 December 2016.***

Oral Judgment :

This writ petition is filed by the tenant who challenges the concurrent judgment and order passed by the Civil Judge Junior Division, Vadgaon in Regular Civil Suit No.53 of 1993 dated 22 December 1995 and judgment and order passed by the District Judge, Pune in Civil Appeal No.168 of 1996.

2. The premises in question are two rooms on the ground floor located within the limits of Municipal council of Lonavala. The suit bearing No.53 of 1993 was filed by the Respondent-landlord seeking possession of the suit premises on the ground that the Petitioner had carried out permanent alterations in the suit premises and that the Petitioner is a willful defaulter in payment of rent and had denied the title of the Respondent-landlord. The Petitioner filed written statement and contested the suit. The learned Civil Judge negatived the case of the Respondent-landlord as regards default in payment of rent and erection of permanent structure by the Petitioner, however decreed the suit on the ground that the Petitioner-tenant had denied the title of the Respondent-landlord in the suit premises. Accordingly by judgment and decree dated 22 December 1995, the learned Civil Judge directed the Petitioner to

hand over vacant possession of the suit premises to the Respondent. Petitioner thereafter filed a Civil Appeal No. 168 of 1996 in the District Court, Pune. The learned District Judge did not interfere in the findings rendered by the learned Civil Judge that there was no default in payment of rent and there was no permanent construction carried out by the Petitioner, but confirmed the finding of the learned Civil Judge that the Petitioner had denied the title of the Respondent-landlord. Accordingly, by the judgment and order dated 19 November 1999, the Appeal was dismissed. Thereafter the present Petition is filed.

3. Heard Ms.Anita Agarwal, learned counsel for the Petitioner and Mr.Venkatesh Shastry, learned counsel for the Respondent.

4. Since the decree has been passed only on the ground of denial of title by the Petitioner of the Respondent-landlord, the learned counsel for the parties have addressed the Court on this limited issue. Section 111(g) of the Transfer of Property Act, 1882 states that a lease can be determined by forfeiture if the lessee renounces his character as such by setting up a title in a third person or claiming the title in himself. Both the Courts, after examining the material on record, have come to the conclusion that the Petitioner denied the title of the Respondent-landlord and set up the claim of being owner by himself. In a Writ petition filed under Article 227 of the

Constitution of India, limited inquiry that is available is to see whether the finding reached by both the Courts on appreciation of evidence before it, is perverse or patently illegal or that no Court could have arrived at such a finding.

5. The Respondent-landlord had pressed into service the ground of denial of title in view of the reply sent by the Petitioner to the notice sent by Respondent-landlord. The Respondent had purchased the entire suit property on 7 January 1992 and on 7 January 1992, by a notice jointly issued by the Respondent and the earlier owner, the Petitioner-tenant was apprised of the attornment of the sale deed. Thereafter this notice was replied by the Petitioner on 15 January 1992. Thereafter another notice was issued by the Petitioner on 4 February 1992 which notice was replied by the Respondent. Second notice is issued on 27 January 1992 which was replied by the Respondent on 4 February 1992. The notice dated 27 January 1992 was notice under section 111 of the Transfer of Property Act.

6. It is the contention of the learned counsel for the Petitioner that all that these replies to the notice state, is a factual position which had transpired and there is no denial of title of the Respondent-landlord. It was also urged that the state of mind of the Petitioner at the time of giving replies will have to be taken into consideration, as the Petitioner was deceived by the Respondent. It

was submitted that all the tenants had agreed to purchase the property in their possession from the earlier landlord and the Petitioner had reposed faith in the Respondent, however, the Respondent unilaterally purchased the entire property from the earlier landlord and it is in this context that the replies were given. The learned counsel for the Petitioner also contended that in the written statement replies to the notice have been referred to and an explanation has been given and by way of an amendment to written statement, it is clearly stated that the Petitioner has accepted the Respondent as a landlord of the premises and that rent is also being paid and accepted.

7. As far as the replies to the notice are concerned, the Petitioner, in the appeal had gone to the extent of even denying the signatures on the said notice. Both the courts after assessing the evidence rendered a categorical finding that these two replies were indeed given by the Petitioner. The learned counsel for the Petitioner has addressed the Court on the premise that the replies have been given by the Petitioner. In any case, having once accepted in the written statement that the notices were replied, the contention of the Petitioner to even deny the signature is nothing but clear afterthought and taken only to come out of the consequences of the denial. As far as the theory that the Petitioner was deceived by the Respondent and that all the tenants had agreed to purchase the

property from the earlier owner, as pointed out by the learned counsel for the Respondent the said theory does not appear in reply to the notice when the Petitioner had the first opportunity to put forth such grievance. Therefore both the Courts have rightly rejected the case of the Petitioner that there was no such understanding between all the tenants. Therefore what will have to be seen is the language and the contents of the reply to the notices. Copies of the replies have been placed on record.

8. The first reply is dated 15 January 1992 in response to the notice issued on 7 January 1992. This reply is delivered to the earlier landlord and the Respondent. The gist of the reply is as follows : Notice has been received. The contents thereof are not acceptable, the transaction privately done is illegal and not acceptable and does not apply to the Petitioner. The Respondent now calls himself as an owner. There is no relationship of landlord and tenant that the Respondent should call himself as an owner. There is no question of payment of any rent. The claim of ownership has been falsely advanced. The house wherein the Petitioner is staying has been given by Shri late Sakharampant Kulkarni for looking after and has been gifted to the Petitioner which fact is known to the Respondent. Since no rent has been paid, it is clear that the Petitioners are not tenants. In view of these facts, which have been pointed out, any steps taken by the Respondent will

be at their risk and consequences. Since the Petitioner alone is the owner there is no question of any transaction.

9. The second reply is dated 4 February 1992 which is in response to the notice dated 27 January 1992. The gist of this reply is as follows – The Petitioner does not accept any such transaction in favour of the Respondent since the Respondent could not have acquired title in respect of the property which could not have been sold. In spite of it the Respondent is making false attempt to deny the ownership rights of the Petitioner and as such an illegal transaction is not acceptable. The Respondent is warned not to act further in pursuance of this deed and to avoid consequences. Since the Petitioners are owner of the premises, the action of the Respondent in sending notices and threatening the Petitioners is act of disturbing peace in the life of the Petitioner. So-called erstwhile owner Smt. Umabai Kulkarni and others are trying to collect the rent which fact has been brought to the notice of the Respondent and the mere rent collector also has a right to collect the rent. There is no relationship of landlord and tenant and therefore, there is no need to pay any rent. Complaint has been lodged with the City survey office to cancel such sale deed. Since no right of ownership exists there is no question of denial of the same.

10. These two letters, by bare perusal, are more than unequivocal

denial of title of the Respondent and setting up title in himself. A clear stand is taken that the Respondent is not the landlord, the sale deed is not valid and that Petitioner became owner by virtue of a gift deed.

11. If it is the case of the Petitioner, as now sought to be advanced in this court, that such letters were issued in disturbed state of mind, nothing stopped the Petitioner from immediately writing letters of apology or retracting the same. Not only such letters were not written but the Petitioner thereafter opposed the application made by the Respondent for taking entries in the property extract, by making an application to the Municipal council of Lonavala. Therefore, it is not a case of momentary error, but a clear and unequivocal stand asserting title, which continued throughout. Therefore, when the suit was filed by Respondent, the Respondent had made out a ground for eviction of the Petitioner on the ground of denial of title.

12. The learned counsel for the Petitioner heavily relied on the averments made in the written statement to contend that in view of the stand taken in the written statement, whatever is stated in the reply to the notices loses its significance. This submission cannot be accepted. In the written statement what is stated is that the reply to the notice has been admitted and the theory of understanding

between the parties has been put forth. It is stated that in view of this understanding and because the Respondent frustrated the right of the Petitioner to purchase the property those replies were given and from this reply it cannot be said that there is any denial of title.

13. As stated earlier, the reply to the notice does not state or give any details of any such understanding. The stand is that the sale deed is not valid and the Petitioner has become owner by way of gift deed. This written statement was filed on 8 March 1994. In the appeal, the amendment was carried out on 16 August 1999 wherein the Petitioner took a stand that the Respondent is landlord and what was narrated earlier is only factual situation and the rent has been paid and accepted. This amendment is a clear afterthought. As far as the stand of the Petitioner, on which the suit is based, is unequivocal. Merely because the Petitioner has subsequently realised that a decree on denial of title can be passed in view of the replies given, in appeal, the written statement is sought to be amended and stand is taken accepting the Respondent as a landlord, it will not take away the effect of setting up of clear title and forfeiture of the tenancy.

14. Both the Courts, therefore, after considering the evidence have not given any weightage to the statement made in the written statement. The shifting stand of the Petitioner, wherein even signatures were denied, also will have to be taken note of. The

learned counsel for the Petitioner relied upon the decision of the Apex Court in the case of *Raja Mohammad Amir Ahmad Khan Vs Municipal Board of Sitapur – 1965 AIR (SC) 1923*. In this decision what was held by the Apex Court was the question whether there has been denial of title by the tenant will have to be adjudicated from the facts and circumstances of the case and all surrounding factors. In the case before the Apex Court, the tenant had used the phrase that the 'land belongs to him' and the Apex Court held that this phrase need not necessarily mean claiming title in the suit premises, which in that case belonged to the government. Therefore, the learned District Judge has rightly distinguished the decision as not applicable in facts of the case.

15. In these circumstances, the view taken by both the Courts, considering the reply filed by the Petitioner, examined alongside the evidence on record and the Written statement, cannot be considered as an impossible view to be taken. No case is made out for interference under Article 227 of Constitution of India. The Writ Petition is dismissed. Rule discharged. No order as to costs.

16. At this stage, Ms. Agarwal, learned counsel for the Petitioner states that one year's time to vacate the premises may be granted to the Petitioner. Mr. Shastri, the learned counsel for the Respondent states that at the most six months time be granted. Considering the facts and circumstances and ground for eviction and that the

premises are residential premises, the Petitioner is granted one year's time to vacate the premises from today on the following conditions. The Petitioners will give their undertaking on or before 22 December 2016 with the following recitals that the Petitioners alone are in possession, the Petitioners will not create third party rights or part with possession and Petitioners will hand over vacant and peaceful possession of the suit premises on or before eight months. If the undertaking is not filed on or before 22 December 2016 then the protection granted will cease forthwith and the Respondent will be entitled to execute the decree. To ensure compliance place the matter on board on 22 December 2016.

(N.M.Jamdar, J.)