

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1516 of 1994

Bhagirthibai W/o Gabaji Navle (DIED)

Through : Legal representatives:

1-A Shrikant Bhagwatrao Navale,
age 32 years occupation Govt. service
R/o 'Dnyan Deep' bungalow, Padampura, Aurangabad.

1-B. Bhagwatrao Gabaji Navale,
age 76 years occupation pensioner
R/o as above.

... APPELLANTS.
(Original plaintiffs)

VERSUS

Amrutlal Devajibhai Solanki (DIED)

Through : Legal representatives:

1-A. Lilabai W/o Amrutlal Solanki

1-B. Hemant S/o Amrutlal Solanki,
minor, natural guardianship of mother-defendant No.1-A

1-C. Hansa Amrutlal Solanki,
age 20 years occupation education
R/o Shrirampur District Ahmednagar

1-D. Shilpa D/o Amrutlal Solanki,
age minor, under natural guardianship
of mother-defendant No.1

(Dismissed as against respondents No. 1-C and 1-D
vide order dated 06/10/2003)

...RESPONDENTS
(Original defendants)

Mr S.S. Choudhary, Advocate for petitioners

Mr A.H. Kasliwal, Advocate for respondent No.1-A

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd October 2017

ORAL ORDER :

Heard Shri S.S. Choudhary, learned Counsel for the petitioner/landlady and Shri A.H. Kasliwal, learned Counsel for the respondent/tenant.

2. In the present petition, the petitioner/landlady has questioned the Judgment and Order dated 13th December 1993 passed by the Additional District Judge, Ahmednagar, dismissing Regular Civil Appeal No. 537 of 1987, preferred by the present petitioner/landlady against the Judgment and decree dated September 28, 1987 passed by the II Joint Civil Judge (Junior Division), Shrirampur, in Regular Civil Suit No. 522 of 1981, whereby claim for determination of tenancy and possession of the suit property of the petitioner/plaintiff, was dismissed.

3. It is the case of the petitioner before the Trial Court that petitioner is the owner of the suit property and same was given on rent to respondent at monthly rent of Rs. 150/-. The tenancy was to commence from the 1st day of each English calendar month. The plaintiff then claimed that rent of Rs. 150/- includes Rs. 120/- towards rent and

Rs. 30/- towards Municipal Taxes. The plaintiff was blessed with two sons, namely , Bhagwatrao and Babasaheb.

4. It is claimed that Bhagirthibai has given a power of attorney to Babasaheb and, as such, Bhagirthibai and Babasaheb issued a notice to respondent/defendant on October 16, 1978, intimating ownership of plaintiff Bhagirthibai and and rent be paid to Bhagirathibai from 1st December 1978. It is further claimed that Bhagirthibai was staying at Aurangabad, however, since the son has retired, she was required to shift to village. It is claimed that amount of Rs. 2850/- remained arrears from 1st December 1978, resulting into filing of suit for eviction.

5. It is not in dispute that the respondent/tenant filed proceedings for fixing of standard rent within 30 days from the date of issue of notice, vide Misc. Application No. 52 of 1980.

6. The defendant, in addition to above, through his legal representatives, has stated that appropriate rent from time to time was paid. It is further claimed that the suit premises were transferred to Babasaheb. Accordingly notice was sent to defendant and, as such, Babasaheb collected the rent upto July 1980.

7. Considered rival claims. The Trial Court framed issues at Exh. 34 and answered that the defendant was not defaulter for more than six months and the plaintiff has failed to prove that she requires suit premises reasonably and for bonafide use. The issue of greater hardship was answered against the plaintiff and in favour of the defendant.

8. So far as claim for fixation of rent by the respondent/tenant is concerned, excluding the Municipal Taxes, the Trial Court fixed standard rent of Rs. 120/- per month.

9. The learned Trial Court considered the evidence of Bhagwat, who is examined at Exh. 74, son of plaintiff, who has brought on record that after the suit property was partitioned in 1976, it was vested in the plaintiff. He has tried to establish that rent was not paid from December 1, 1978, for which notice was issued on July 7, 1980.

10. Defendant has examined Lilabai, who has stated otherwise viz. the payment of rent upto 31st July 1980 by Amrutlal and said rent being collected by Babasaheb.

11. In appeal, the Appellate Court re-appreciated entire evidence and dismissed the claim of the petitioner for decreeing the suit by dismissing his appeal.

12. In the aforesaid backdrop, it is case of the petitioner before this Court that an amount of rent was not paid since December 1, 1978 to the plaintiff by the tenant. Amount, if any, paid to Babasaheb, cannot be accepted as offering of rent to the plaintiff as by notice on October 16, 1978, it was within the knowledge of respondent to pay the rent to the plaintiff. The provisions of Section 12(3)(a) of the Bombay Rent Control Act, 1947 are not adhered to and it is alleged that the claim is covered by the judgment of the Apex Court in the matter of **Ganpat Ladha Vs. Sashikant Vishnu Shinde**, reported in **AIR 1978 Supreme Court 955(1)**, as according to him, the aforesaid condition incorporated in the said provision of deposit of rent in the Court, was not complied with. He would then urge that defaults are not properly analysed post 1990 period.

13. Considered the rival submissions of respective parties.

14. It appears from the record of the petition that the Registrar (Judicial) passed an order on October 6, 2003, dismissing the petition against respondents No. 1(c) and 1(d), as the notices were not served on the said respondents/tenants.

15. Thereafter no steps are taken by the petitioner to get

restored the petition against the legal heirs of the original tenant, namely, Hansa Amrutlal Solanki and Shilpa Amrutlal Solanki.

16. As the tenancy can be inherited, the petitioner is unable to satisfy this Court as to why petition should not abate and be accordingly dismissed for the reason of Judgments of both the Courts below have attained finality viz. original respondents No.1(c) and 1(d), against whom petition was dismissed for want of prosecution.

17. In the wake of above, in my opinion, the cause cited in the petition no more survives.

18. Apart from above, if this Court considers judgments of both the courts below, there are concurrent findings of fact against petitioner/landlady. In such an eventuality, this Court is required to be cautious while considering the claim of the petitioner afresh having regard to the restrictions and the scope under extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India.

19. So far as first contention of the petitioner viz. the requirement of the premises for bonafide need is concerned, the fact remains that original landlady/plaintiff and original tenant/defendant have

died and it is their second generation, who are litigating before this Court.

20. So far as tenancy between the parties is concerned, is not an issue of dispute.

21. The fact remains that on behalf of the original plaintiff, her son entered into the witness box to depose that aged mother of about 86 years old needs premises for bonafide occupation. Both the Courts below disbelieved said story on the ground that she being an old lady, cannot be expected to stay alone at Shrirampur, in view of fact that her both sons are having independent houses. In the background, the Courts below considered the issue of hardship against the plaintiff.

22. In such an eventuality, if the claim as is sought to be put-forth for grant of decree for possession, I hardly notice any material in favour of the petitioner/plaintiff to reconsider such claim by re-appreciating entire evidence afresh in extra ordinary jurisdiction of this Court. The reason for forming such an opinion is that there is no perversity demonstrated by the petitioner before this Court, which prompts for indulgence from this Court in the said finding of fact recorded by both the Courts below.

23. So far as issue of arrears of rent is concerned, both the Courts below have concurrently held that a fact is also admitted by the plaintiff that the rent upto July 1980 was paid to Babasaheb, son of the plaintiff, upon instructions, to that effect issued by the plaintiff. The said observations are required to be believed having regard to the advance age of the plaintiff, even though she claims to be owner by virtue of partition. Both the Courts below, rather, has appreciated to record finding that the amount in fact is paid in excess as rent amount, in addition to amount deposited in the Court below.

24. I hardly notice any perversity having gone to the observations made by both the Courts below.

25. So far as claim of the petitioner of non-compliance of provisions of Section 12(3)(b) of the Bombay Rent Control Act is concerned, it is required to be noted that if the tenant fails to comply with the conditions prescribed in Section 12(3)(b), the landlady is entitled for eviction of such tenant.

26. However, it is for the landlady, who has claimed that such condition was not satisfied. It is to be noted that in the present case, the findings are recorded that the landlady has received rent well within

time, through her son, pursuant to its instructions, as is reflected from the defence and evidence of Lilabai and one Mantri, who has deposed as a witness of the defendants.

27. In the said background also, it will be difficult to observe that the condition under section 12(3)(a) is not complied by the respondents/defendants and, as such, is entitled for decree of eviction and possession.

28. In view of above finding, in my opinion, no case for interference is made out. The petition, as such, fails and stands dismissed.

(NITIN W. SAMBRE, J.)

pjm