

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4969 OF 1998

Smt. Parvatibai w/o Bandu Marathe
age 69 years, occ. household
r/o White Building, At Amalner
Tq. Amalner, Dist. Jalgaon

Petitioner

Versus

Smt. Radhabai Chaggan Bhandarkar
deceased by her heirs :

1. Smt. Subhadrabai Pandharinath
Bhandarkar, age 68 years,
occ. household
2. Sharadchandra Pandharinath
Bandharkar, age 40 years
occ. service.

Both r/o Near Rest House,
at Amalner, Tq. Amalner
Dist. Jalgaon

Respondents

Mr. S.P. Shah, advocate for the petitioner.

CORAM : R.M.BORDE, J.
RESERVED ON : 30th MAY, 2017.
PRONOUNCED ON : 2nd JUNE, 2017.

JUDGMENT :

1. Petitioner-tenant is objecting to the decision rendered by the Additional District Judge, Amalner on 21.07.1998 in Civil Appeal No. 529/1989 (old Civil Appeal No. 181/1986) decided on 21.07.1998. Appellate Court while allowing the appeal directed

eviction of the petitioner-tenant out of the tenanted premises. Petitioner was granted four months time for vacating the tenanted premises.

2. Respondent - landlady presented suit bearing Regular Civil Suit No. 174/1982 seeking eviction of the petitioner-tenant. According to respondent-landlady, petitioner-tenant, after demise of her husband by name Bandu Marathe, who was tenant of the suit premises continued in possession of the residential house property as a tenant on the same conditions which were agreed between the landlady and deceased husband of petitioner. It is alleged that petitioner-tenant is in default in payment of rent and, even after issuance of notice, the amount was not deposited. It is also alleged that the tenant without consent of the landlady has erected a permanent structure in the tenanted premises.

3. Petitioner herein appeared in the matter and resisted the claim contending that infact alongwith her, her sons are also residing in the tenanted premises. It is contended that since the sons of petitioner, whoa re residing in the tenanted premises are not made party to the suit, the suit is not tenable. It is contended by petitioner that she herself used to pay rent of the suit house to the landlady regularly however, the landlady avoided to issue rent receipt to her saying that her son had gone out of Amalner and the receipt book is with him. So far as notice issued by landlady is concerned, it is the contention of the petitioner-tenant that on enquiry the landlady informed her that notice has been mistakenly issued to her and she need not reply the same. So far as raising of construction and making alteration of permanent nature are

concerned, the allegations are denied by the tenant.

4. After recording evidence of the parties, trial Court answered the issue in respect of default in payment of rent having been committed by tenant in favour of the landlady. Another ground raised by the landlady in respect of erection of the permanent structure over the tenanted premises is concerned, the trial Court has recorded finding that the said ground has not been substantiated by the landlady. Trial Court dismissed the suit on the ground of non-joinder of necessary party. It is recorded by the trial Court that the sons of the deceased tenant who were also residing alongwith defendant-tenant after demise of her husband have not been joined as party to the suit and as such, the suit is not maintainable.

5. Being aggrieved by the judgment and order passed by the trial Court, the landlady presented appeal bearing Civil Appeal no. 529/1989 to the Court of Additional District Judge, Amalner. The appeal came to be allowed by the appellate Court, which order is impugned in this petition at the instant of the tenant.

6. Mr. S.P. Shah, learned counsel for petitioner-tenant contended that the finding recorded by the first appellate court that the suit presented by landlady against petitioner is maintainable and that the suit does not suffer from defect of non-impleadment of necessary parties i.e. sons of the deceased tenant who were residing alongwith her at the time of death of original tenant, is erroneous and deserves to be set aside. Petitioner contends that the definition of tenant includes the members of the

family residing with the tenant at the time of his death and as such, the three sons who were residing with petitioner at the time of death of original tenant are necessary parties to the suit and, no decree can be passed against them in their absence.

7. The definition of tenant is provided in section 5(11) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Section 11(c)(i) is relevant for consideration with reads thus :

"11(c)(i) in relation to any premises let for residence, 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;"

On reading the provisions of section 11(c)(i) of the Act, it is evident that 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, shall be a tenant.

8. In the instant matter, the petitioner, who is a member of the family of the deceased tenant, being his wife, is held to be the tenant by the Court. It is admitted position that the amount of rent was paid by the petitioner to the landlady and, she (petitioner) in her written statement has categorically stated that inspite of payment of rent to the landlady by her, the landlady refused to

tender receipts on some pretext. Petitioner claims herself to be a tenant after demise of her husband. The sons of the petitioner never disputed the claim of petitioner being a tenant in any of the proceedings. It is only one member of the family who can be recognised as a tenant by the Court and not all the members residing in the premises at the time of demise of the original tenant. In this context, it would be appropriate to refer to the judgment in the matter of Miss Gool Rustomji Lala Vs. Jal Rustomji Lala, **1973 BLR 600** wherein the Court has observed thus:

"Whenever person who are members of the tenant's family start a scramble for the tenancy rights, in a sense the war of succession begins. Succession to the property of the deceased is generally decided by applying the Rules of succession forming part of the personal law of the parties. But the law of succession is substantially modified while resolving the disputes which arise after the death of the tenant, whether statutory or contractual. If the several members, who are residing as members of the tenant's family, fail to come to an agreement, then the Court has to make the choice and declare that one amongst them will be the tenant for claiming the protection of the Rent Act. The Court will have to take into account several relevant factors including the wishes of the deceased tenant. In all such cases the Court should have regard to the paramount collective interest of the family of the deceased tenant. The Court should make the choice in such a way that the person selected to be the tenant is likely to act in the interest of the family, like the Karta of a Hindu joint family or the paterfamilias. If the Court has in mind such considerations then it is likely that the Court will select the right person for looking after the collective interest of the tenant's

family after his death. In any event the Court cannot declare more than one person as the tenant under section 5(11)(c) of the Rent Act."

9. In identical circumstances, similar plea raised on behalf of the tenant has been turned down by the learned Single Judge of this Court in the matter of Vimalbai Keshav Gokhale Vs. Avinash, Krishnaji Biniwale & others, **2004(1) Bom.C.R. 839**. The learned Single Judge placing reliance on the judgment in the matter of Miss. Gool Rustomji Lala (supra) held that only one of the members of the family can inherit tenancy and not every member. In the reported matter, the son was residing in the suit premises alongwith mother, wife and children. The mother never resisted acceptance of son as a tenant and as such, the plea raised by other members of the family that the suit is not tenable in their absence has been rejected. Similar view has been adopted by the learned Single Judge of this Court in the matter of Shri Ramesh Ramgopal Daga Vs. Shri Vasant Baburao Khandare, **2005(4) All MR 844**.

10. Learned counsel for petitioner-tenant, placing reliance on the judgment in the matter of Rajaram Brindavan Upadhyaya and others Vs. Ramraj Raghunath Upadhyaya and others, **1977 Mh.L.J. 792**, contends that the provisions of section 5(11)(c) are not meant to supersede the right of inheritance to the tenancy vesting in the heirs on the death of the tenant, under the personal law of the party. There can be no dispute as regards the proposition put forth however, in the reported matter, the issue was raised by plaintiff, who claimed to be the heir of deceased tenant, against the tenant, who was the nephew of the deceased tenant residing with

him at the time of his death and who claimed tenancy under section 15(11)(c) of the Rent Act. Thus, in the reported matter, there was dispute as regards entitlement of inheritance of tenancy rights inter se between plaintiff and defendant and as such, reliance placed by petitioner on the aforesaid judgment is misplaced.

11. Contention of petitioner that reliance placed by the appellate Court on the judgment in the matter of Kanti Bhattacharya and others Vs. K.S. Parmeshwaran and another, **1993 Mh.L.J. 1521**, is misplaced, also does not deserve to be accepted for the reasons that the proposition laid down in the matter of Miss Gool Rustomji Lala (surpa) lays down the same interpretation as in the reported matter i.e. Kanti Bhattacharya and others (supra). In the matter of Kanti Bhattacharya, the question raised was in respect of validity of notice which was served on widow and not on the other members of the family residing with her as a tenant. The Court accepted the contentions of the landlord while holding that the widow on whom notice has been served shall have to be accepted as tenant within meaning of section 5(11)(c)(i) of the Act.

12. For the reasons recorded above, according to him, the judgment of the first appellate Court does not deserve interference. Writ petition is devoid of substance hence stands rejected. Rule discharged. No costs.

(R.M.BORDE)
JUDGE