

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5509 OF 1998

Shri Harichandra M. Vaishya)
 aged 40 yrs. Indian Inhabitant)
 Occupation: Business, Residing at Satpati,)
 Taluka Palghar, District: Thane)...Petitioner
 (Org.Defendant)

Versus

Habib Kasam Punja)
 aged 60 yrs., Indian Inhabitant,)
 residing at Satpati, Taluka: Palghar,)
 District: Thane.)...Respondent
 (Org.Plaintiff)

Mr.M.R. Phal for the Petitioner.

Mr.Anup N. Deshmukh I/b. Mr.Ashok Gade for Respondent

CORAM : G.S.Kulkarni, J.

Reserved on : 24th July,2017

Pronounced on : 2nd November,2017

JUDGMENT:

1. In this petition under Article 227 of the Constitution, the petitioner is the original defendant (tenant) in Regular Civil Suit No.65 of 1991, filed by the respondent/plaintiff (the landlord), before the Court of Civil Judge, Junior Division, Palghar, District - Thane.

2. The petitioner is aggrieved by the concurrent findings against him in the judgment of the learned Trial Judge decreeing the respondent's suit for possession on the ground of arrears of rent, as confirmed by the learned appellate Judge, by the impugned judgment and order dated 13th July 1998 passed in Civil Appeal No.215 of 1996.

3. In nutshell, the facts are:-

The suit premises is a wooden gala (cabin) adjacent to the house of one Alibhai Kasambhai Bhimani, admeasuring 20' x 20' on the western side, in 'A' ward on Survey No.215 (for short, the 'suit premises'). The suit premises were let out to the petitioner's father on a monthly rent of Rs.120/- to conduct the business of selling vegetables. After the death of the petitioner's father, the respondent allowed the petitioner to continue to be the tenant of the suit premises. The agreed rent was Rs.120/- per month. The tenancy commenced on the first day of the month. The petitioner had paid rent upto 28th February 1987 and was a defaulter in payment of the rent till filing of the suit on 26th July 1991.

4. Prior thereto on 29th December 1990 the respondent had addressed a notice to the petitioner demanding arrears of rent and

also terminated the tenancy. The arrears of rent were of Rs.5640/-. The petitioner did not comply with the said notice, by either making payment of the arrears or by handing over vacant possession of the suit premises to the respondent. The respondent consequently filed the suit in question, before the Court of Civil Judge, Junior Division, at Palghar, District Thane.

5. The petitioner appeared in the suit and filed a written statement inter alia contending that the suit premises (cabin) was not owned by the respondent and thus the respondent did not have any right, title and interest in the suit premises. The petitioner denied that the petitioner's father had taken the suit cabin on rent and had paid rent to the respondent. The petitioner then contended that the suit premises were situated on the "gaothan land" which was not owned by the respondent but by the Grampanchayat. That the Grampanchayat had recorded the suit cabin on the petitioner's name and hence the suit as filed by petitioner was false. The petitioner on this ground denied the relationship between him and the respondent as that of a landlord and tenant. The petitioner however did not dispute that after the death of petitioner's father, the petitioner was paying rent of Rs.120/- per month.

6. The learned trial Judge considering the rival pleas framed the following nine issues :-

- “1. Does the plaintiff prove that defendant is his tenant ?*
- 2. Does the plaintiff prove that tenancy month commences from 1st day and ends on last day of the same English month ?*
- 3. Does the plaintiff prove that monthly rent is Rs.120/- an defendant has not paid it since March 1987 ?*
- 4. Does the defendant prove that suit property is owned by him ?*
- 5. Does the defendant prove that suit property is H.No.345 of the defendant ?*
- 6. Whether the plaintiff entitled for possession ?*
- 7. Whether plaintiff is entitled for rent ?*
- 8. What is due from the defendant to the plaintiff ?*
- 9. What order and decree ?”*

7. The petitioner and respondent examined themselves. The parties were also cross-examined on behalf of their opponents. The learned trial Judge considering the evidence on record answered issue nos.1 to 3 and issue nos.5 to 8 in the affirmative and against the petitioner-tenant. The learned trial Judge held that the petitioner was the tenant of the suit premises as also the petitioner was in arrears of the rent. The claim of the petitioner that he was the owner of the suit premises and thus there was no relationship of landlord and tenant was also negated. The respondent's suit was decreed by the learned trial Judge in the following terms:-

- “1. The suit of the plaintiff is hereby decreed.*
- 2. Defendant do hand over the vacant possession of the*

- suit cabin to the plaintiff.*
3. *Defendant do pay the arrears of the rent of Rs.4320/- to the plaintiff.*
 4. *Defendant do pay the costs of the suit to the plaintiff and bear his own if any.*
 5. *Decree be drawn accordingly.”*

8. The petitioner being aggrieved by the judgment and decree passed by the learned Trial Judge approached the Court of Additional District Judge, Palghar, in Civil Appeal No.215 of 1996. The learned appellate Judge, observed that the petitioner's assertion that he is the owner of the suit premises was without any substance as there was no material on record which would indicate the petitioner's ownership of the suit premises or that of the petitioner's father. It was held that there existed a relationship of landlord and tenant between the respondent and the petitioner. The learned Appellate Judge accordingly dismissed the appeal.

9. The learned Counsel for the petitioner in assailing the above concurrent findings as recorded by both the courts below, against the petitioner, would contend that both the courts have erred in reaching to a conclusion that the petitioner was in arrears of rent and that the respondent as a landlord was entitled to receive rent. It is submitted that these findings are contrary to the evidence on record. It is submitted that the petitioner was not liable to make

payment of the rent to the respondent as the suit premises were owned by the petitioner's father. Secondly, it is contended that the “Grampanchayat Extracts” of payment of tax/fees were sufficient to indicate that the land was gaothan land, on which the suit premises/cabin was situated, falsifying the respondent's claim in the suit. The Grampanchayat extracts were sufficient proof to conclude that the respondent was not the owner/landlord of the suit premises. It is submitted that there was no requirement of any other document of title to be produced and proved by the petitioner, as the said material as placed on record was sufficient for the learned trial Judge to dismiss the respondent's suit filed on the ground of arrears of the rent.

10. On the other hand, the learned Counsel for the respondent has supported the findings of the Court's below. It is submitted that no case has been made out to interfere in the concurrent findings as recorded by the trial Court and the appellate Court. It is submitted that the petitioner had failed to prove his case that there was no relationship of landlord and tenant between the parties. It is submitted that the extract of the Grampanchayat taxes etc, are not the documents of title, on the basis of which the petitioner could assert/prove the title/ownership of the suit premises.

It is further submitted that the respondent did not deny that the petitioner was paying rent of Rs.120/- per month to the respondent, thereby accepting the relationship of landlord and tenant. It is thus submitted that the petition deserves to be dismissed, accepting the findings recorded by both the courts below.

11. I have heard the learned Counsel for the parties. With their assistance, I have also perused the judgment of the learned trial Judge as also the learned appellate Judge. I have also perused the record and proceedings.

12. It is not in dispute that initially the father of the petitioner was occupying the suit premises and was paying rent to the respondent and to that effect was issued rent receipts (Exh.24 and Exh.25). The petitioner's father expired in the year 1984. Thereafter the petitioner continued to occupy the suit premises and was paying rent of Rs.120/- per month. The petitioner had also taken necessary permission for doing some repairs. It is also not in dispute that the petitioner paid the rent to the respondent upto 28th February 1987 for which rent receipts were issued to the petitioner, for the said period. The evidence in that regard is at Exh.27, Exh.28 and Exh.29, which are counter receipts, bearing the signature of the petitioner. Although

there was sufficient material on record to show that the petitioner as a tenant was making payment of rent to the respondent, however strangely the petitioner took a plea in defending the suit, that his father had not taken the suit premises on rent and had not paid rent, but was occupying the premises in the capacity as the owner, thereby denying the relationship of landlord and tenant between the respondent and the petitioner. To support this plea that the respondent was not the owner and it was the petitioner's father or the petitioner, who were the owners of the suit premises, the petitioner did not bring on record any document of title. This contention was supported by the petitioner merely relying on "Grampanchayat tax receipts " which were revenue receipts and not of any relevance, which can support the plea of ownership of the suit premises. As rightly observed by the court's below this was surely not sufficient to reach to a conclusion that the respondent is not the owner of the suit premises. It is significant that the petitioner had received the suit notice dated 29th December 1990 terminating the tenancy, the petitioner never responded to the said notice. Further the evidence interalia of the rent receipts issued to the petitioner and as acknowledged by him, and as placed on record on behalf of the respondent, have remained unchallenged. Thus, there was no defence worth acceptance, which would persuade the court to reach

to a conclusion that the petitioner was not in arrears of rent. The respondent in these circumstances was well entitled for a decree of possession under Section 13(1) of the Bombay Rent Act.

13. In the above circumstances, I do not find any perversity in the findings as recorded by the trial Court as also by appellate Court. The writ petition is devoid of merits. It is, accordingly, dismissed.

14. The petitioner is directed to hand over the possession of the suit premises to the respondent within a period of 8 weeks from today.

15. No order as to costs.

(G.S.Kulkarni, J.)