

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12281 OF 2017**

Subhash Shamlal Pardeshi (Gupta)	...Petitioner
<i>Versus</i>	
Late Mangilal Kuderimal Sharma (deceased)	
Through LRs Kantidevi Mangilal Sharma & Ors	...Respondents

Mr Vasant D Raut, for the Petitioner.

**CORAM: G.S. PATEL, J
DATED: 14th November 2017**

PC:-

1. Heard.

2. The Writ Petition takes exception to an order dated 4th April 2017 of the Ad-hoc District Judge-1 at Pune in Civil Appeal No. 391 of 2007 filed by the present Respondents to the Writ Petition, reversing an order dated 27th-29th November 2006 of the Small Causes Court at Pune decreeing the Petitioner/Plaintiff's Civil Suit No. 95 of 2005.

3. The Plaintiff sought possession of a godown situated at Bhavani Peth, Pune on two grounds. The first was non-payment of rent. The second was unlawful subletting. The Plaintiff claimed to be the sole owner and the landlord of the premises. He said the tenancy was

created in favour of Defendant No.1 by the Plaintiff's predecessor and title. That Defendant was allegedly in arrears of rent of Rs.3,729/- since 1978. He also said that the 1st Defendant had stopped using the premises and that he had sublet them unlawfully to Defendants Nos.2 and 3, presently in possession. The Plaintiff issued a notice in November 2004 terminating the tenancy. The notices were returned unclaimed. Hence the suit.

4. The 1st Defendant entered a written statement the tenancy was undisputed. The 1st Defendant denied being in arrears or having sublet the premises. The 1st Defendant also denied the landlord-tenant relationship in the circumstances mentioned a little later in this order. The 1st Defendant said he was put in possession as a tenant by the Plaintiff's grandfather one Shivshankar Shivnath Pardeshi at a rent of Rs.10/-. After his death his widow Rajeswaribai recovered rent through her son Rajendra. Rajendra had no grievance against the Defendant. Before the Appeal Court the 1st Defendant actually led the evidence of Rajendra to whom he was paying rent. Rajendra is the Plaintiff's brother. The Plaintiff, Subhash, claimed that under a testamentary dispossession he alone was entitled to the premises and that Rajendra was not entitled to collect rent. As the Appellate Court noted, this was of no concern whatever to the tenant. It could not be said that the tenant was in default of payment of rent. If there was a dispute between Subhash, the Plaintiff, and Rajendra, his brother, that was for them to resolve in an appropriate manner. The Plaintiff did not set out how his name was entered on the property records. He showed a document but it was said to pertain another property CTS No.820. However that is not strictly material for the purposes of the present discussion. What is clear is that the evidence of the tenant was that

rent was paid till December 2006 to one person who claimed to be a co-sharer or co-owner and the Appellate Court correctly said that the 1st Defendant has nothing to do with any dispute between the Plaintiff and DW-4, a matter that was completely overlooked by the Trial Court.

5. On the question of the notice, the Appellate Court found that there was no mention of the date of the notice either in the plaint or in the evidence. Having regard to the fact that payment was made to Rajendra, there was no cause to issue the notice to the effect that the Defendant was a defaulter as on the date of the suit. The learned Trial Court could not have determined title to the property as between the Plaintiff and his brother and in doing so the Trial Court fell into error. In my view the Appeal Court was completely correct in its assessment of the Trial Court order.

6. This leaves the question of unlawful subletting. Here the evidence that was before the Court was carefully considered by the Appellate Court in paragraph 13. The Appellate Court found on a careful evaluation of the evidence that the Plaintiff's evidence was not credible and had been sufficiently dislodged in cross-examination. The Appellate Court found that the Plaintiff was constantly changing his version about the location of the suit premises and had no personal knowledge of whether the Defendant No.1 was using the premises, as he claimed, or had put someone else in those premises. The 1st Defendant said that the two persons said to be "sub-tenants" were actually his employees and workers. The Plaintiff examined a number of witnesses, all of whom were tenants of the Plaintiff. There was no conclusive evidence therefore of subletting, at least none on which a

decree for eviction could safely be passed. It was in these circumstances that the Appeal was allowed.

7. I am unable to discern any infirmity with the impugned order that demands interference by this Court in exercise of discretionary powers under Article 226 or 227 of the Constitution of India.

8. The Writ Petition is rejected. No costs.

(G. S. PATEL, J.)