

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 921 OF 2018**

Shri Gurudas Narayan Salgaonkar
(since deceased) through legal
representatives,

A. Smt. Suhasini Gurudas Salganokar,
wife of late Shri Gurudas Salgaonkar,
age 64,

B. Shri Vasant Gurudas Salaonkar,
Son of of Shri Gurudas Salgaonkar,
age 35,

C. Kumari Geeta Gurudas Salgaonkar
Daughter of of Shri Gurudas Salgaonkar,
aged 34,

D. Kumari Gandhali Gurudas Salgaonkar,
Daughter of Shri Gurudas Salgaonkar,
age 32,

E. Shri Girish Gurudas Salgaonkar,
Son of of Shri Gurudas Salgaonkar,
age 31,

F. Kumar Gaurish Gurudas Salgaonkar,
Son of Shri Gurudas Salgaonkar,
age 31,
All represented by their mother,
The Petitioner No.A,
residing at House No.43,
Dr. Dada Vaidya Road,
Panaji-Goa.

... Petitioner

V e r s u s

Shri Krishna Aras (since deceased)
Through Legal Representatives,

1. Smt. Anandi Krishna Aras,
Wife of late Mr. Krishna Uttam Aras,
(Since deceased) through Lrs
2. Shri Shivaji Krishna Aras,
Son of late Shri Kirshna Aras,
3. Smt. Geeta Shivaji Aras,
Wife of Mr. Shivaji K. Aras,
4. Shri Ajay Krishna Aras,
Son of late Krishna Aras,
5. Smt. Meena Ajay Aras,
Wife of Shri Ajay Aras,
6. Shri Girish Krishna Aras,
Son of late Krishna Aras,
7. Smt. Ujjwala Girish Aras,
Wife of Shri Girish Aras,

All major, Indian Nationals,
H.No.81, Aras Building,
Near Mahalaxmi Temple,
Panaji-Goa.

.... Respondents.

Shri Vasant Salgaonkar Petitioner in person.

Ms. Amira Razak, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 10th December, 2018.

Oral Order:

By this petition, the petitioners who are the legal heirs of Gurudas Salgaonkar (the original respondent/tenant) before the Rent Controller, are

challenging the concurrent findings of the Courts below directing eviction on the ground of arrears of rent and subletting.

2. That now deceased, Krishna Uttam Aras, the landlord sought eviction of late Gurudas Salgaonkar from the suit pressies, which consists of a shop situated in a building known as “Aras Building” situated at Dr. Dada Vaidya Road, Panaji. The case made out in the application was that the shop was taken on lease about 20 years prior to the filing of the application on a monthly rent of Rs.200/- which was payable on or before 5th of the next calendar month. Admittedly there is no written lease agreement between the parties.

3. It was contended that the tenant failed to pay the rent regularly and at the time when the application was filed, the rent from June 1984 till August 1992 amounting to Rs.19,400/- was due. He, however, claimed that no action was taken as the original tenant was suffering from mental sickness and heart problem and was admitted in Goa Medical College at Panaji-Goa. It was contended that the original tenant inducted a third party in the garage without the consent of the landlord. Thus the eviction was sought on the twin grounds of arrears of rent and subletting.

4. The original respondent resisted the application. He claimed that the monthly rent was Rs.100/- and not Rs.200/- as claimed, which was being regularly paid and there was no default. He, however, admitted that he could not pay the rent from August 1992 as he was suffering from mental illness. He claimed that he moved an application dated 20/8/1993 for deposit of rent, which was allowed. He claimed that during the period of his mental illness and heart ailment, his nephew was regularly paying the rent. It was denied that there was any subletting of the suit shop. It was claimed that there were some workers engaged by the respondent to assist him. Incidentally the respondent/original tenant was a motor mechanic and was conducting on business of repairs of motors under the name and style M/s. Laxmi Auto Centre.”

5. Before the Rent Controller, Girish Aras was examined as (AW.1) along with Shri Anant S. Kane, (AW.2) and Gangadhar Kammar, (AW3), while the original respondent examined his wife Suhasini Gurudas Salgaonkar (RW.1) and son Vasant Salgaonkar (RW.2).

6. The learned Rent Controller framed two issues both of which were answered in the affirmative and by an order dated 22/12/2014, the application for eviction came to be allowed, directing the petitioners to vacate

the suit shop within a period of two months and to hand over vacant possession to the respondents herein. Feeling aggrieved, an appeal came to be filed before the learned District Judge being Rent Appeal No.10/2015, which has been dismissed on 12/7/2018. Hence this petition.

7. I have heard the petitioner, Shri Vasant Salgaonkar in person and Mrs. Razaq, the learned counsel for the respondents. I have gone through the record and the impugned orders passed by the Courts below.

8. It is submitted by the petitioner no.2 in person that there is no acceptable evidence in support of the claim of arrears of rent and subletting. Mainly the contentions were limited to the ground of subletting. Reliance is placed on the decision of the Supreme Court in the case of **Nirmal Kanta (Dead) through Lrs. Vs. Ashok Kumar & anr. (2008) 7 SCC 722**, in order to submit that subletting essentially presupposes parting of actual possession in favour of a third party/stranger for consideration, which is not established in this case. It is submitted that the parting of actual possession is the necessary ingredient for establishing subletting. The petitioner has taken me through the evidence of AW.2 and AW3 in order to submit that their evidence is not acceptable to establish subletting.

9. Ms. Razaq, the learned counsel for the respondents on the contrary has supported the impugned order. It is submitted that the sub tenant himself is examined as AW3 and his evidence has rightly been accepted by both the Courts below. It is submitted that this Court would not re-appreciate the evidence unless and until the finding recorded by the Courts below is perverse. It is submitted that after properly appreciating the evidence the Courts have rightly come to the conclusion that there is a case of subletting made out and has directed eviction. It is submitted that the evidence of RW.1 and RW.2 on the contrary does not inspire confidence in as much as it was not the case made out that RW2 was helping the original respondent/tenant in the matter of running of the garage.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. At the outset it is necessary to mention that Ms. Razaq, the learned counsel for the respondents has restricted the claim of eviction on the ground of subletting. There is no manner of dispute that subletting requires parting of possession by the tenant in favour of a third party/stranger. It is well settled that such contracts are entered into surreptitiously behind the back of the landlord and therefore, the documentary evidence of any such contract cannot be expected or insisted upon. The question, is essentially of a reasonable inference on the

basis of the evidence led. The question whether there is subletting would depend upon facts and circumstances of each case. Admittedly, the original tenant Gangadhar Kamat was suffering from mental illness and heart ailment and was admitted in Goa Medical College. It was contended that there were some mechanics employed to help the original tenant in conducting the garage. On the contrary, there is evidence of AW.2, who claimed that in the year 1992 his wife was owning a Maruti 800 vehicle which he used to take to M/s. Anand Service Station on Taleigao road, where one Gangadhar Kammar (AW3) was working as a mechanic. The said workshop was closed somewhere in the year 1992. AW2 claimed that Gangadhar Kammar, AW3 came to him and told him that he has hired a garage of one Shri Guru Salgaonkar near Mahalaxmi temple (i.e. the garage run in the suit shop) and requested him to bring his vehicle at the said place for repairs. AW3, Gangadhar Kammar also claimed that initially he was working at Auto Scan Centre, Hubli and subsequently came down to Goa somewhere in the year 1988 and started working at M/s. Anand Service Station at Taleigao where he worked for 5 years. Later he decided to start his own garage and was looking out for premises and upon inquiry he came to know that there was a garage situated near Mahalaxmi temple, which was available on lease. He accordingly contacted Guru Salgaonkar (the original respondent) who handed over the possession of the said garage to him somewhere in the year 1992.

Mr. Guru Salgaonkar, however expressed inability to execute a written agreement, stating that he is not the owner of the said premises and that he himself is the tenant of the said premises. AW3 also claimed that he used to pay Rs.100/- as rent per month to Mr. Guru Salgaonkar, against which no receipts were issued for the same reason that Guru Salgaonkar was not the owner of the said premises. AW.3 claimed that he was in possession of the garage till the year 1997 after which he started his own garage at his residence at Taleigao. He also claimed that after he left the garage Mr. Guru had leased the said garage to one Mr. Das. With the assistance of the parties I have gone through the evidence and I do find that, on the basis of the evidence as led, it is established that there was parting of possession of the suit garage in favour of AW3 for consideration.

11. In the present case, the evidence of RW1 and RW2 to my mind has rightly been not accepted by the Courts below. The finding so recorded does not suffer from any infirmity so as to require interference. The petition is without any merit and it is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/