

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 6135 OF 2018
WITH
WRIT PETITION NO.6136 OF 2018

Chotelal Zingur Gupta	]	Petitioner
Vs.		
Urmiladevi Ramnath Gupta	]	
Through her Power of Attorney Holder	]	
Anil Kumar Ramnath Gupta & Anr.	]	Respondents

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Mr. Sushant S. Prabhune, for petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 11TH JUNE, 2018.

P.C.

Heard Mr. Prabhune, learned Counsel for the petitioner in both the Petitions at length.

2. Writ Petition No.6135 of 2018 takes exception to the judgment and decree dated 12th July, 2016 passed by the learned District Judge-6, Thane in Civil Appeal No.319 of 2012. By that order, the learned District Judge allowed the appeal preferred by respondent No.1, hereinafter referred to as "Plaintiff" and quashed and set aside the judgment and decree dated 12th July, 2012 in passed by learned 8th Joint Civil Judge Senior Division, Thane in Regular Civil Suit No.747 of 2008. The learned District Judge declared that the plaintiff is a lawful tenant of respondents No. 2 and 3/landlords, hereinafter referred to as defendants No.2 and 3 in respect of residential Room No.1 on the first floor of building 'Hasan Teli' situate at old Belapur Road, Takoli

Mohalla, Nr. Sahakar Bazar, Kalwa, Thane – 400 605 (for short 'suit premises') and that her tenancy rights are still valid and subsisting. The learned District Judge declared that change of rent receipt of tenancy in the name of defendant No.1 by defendants No.2 and 3 in respect of the suit premises is illegal, unlawful and not binding upon the plaintiff. The defendants are directed to restore possession of the suit premises to the plaintiff within three months from the date of the order.

3. Writ Petition No.6136 of 2018 takes exception to the judgment and decree dated 5th October, 2015 passed by the learned District Judge-11, Thane in Civil Appeal No.178 of 2013. By that order, the learned District Judge allowed the appeal preferred by respondent No.1/plaintiff and quashed and set aside the judgment and decree dated 12th July, 2012 passed by 8th Joint Civil Judge Senior Division Thane in Regular Civil Suit No.748 of 2008. The learned District Judge declared that plaintiff's tenancy rights in respect of Shop No.1 admeasuring 260 square feet situate on the ground floor of Hasan Teli building are still valid and subsisting. Defendants No.2 and 3 are directed to issue rent receipt in the name of the plaintiff.

4. Since the Petitions are between the same parties and raise common questions of law and facts, the same can conveniently be disposed of by this common order. In order to appreciate controversy between the parties, facts in Writ Petition No.6135 of 2018 are taken into consideration.

5. In support of this Petition, Mr. Prabhune submitted that defendants No.2 and 3 inducted the plaintiff as a tenant in respect of Room No.1 by executing tenancy agreement on 29th November, 1985. He submitted that in the year 1987, the plaintiff left for her native place in U.P. In the suit, the plaintiff examined her son who is her Power of Attorney. The said witness

admitted that the plaintiff is neither residing in Room No.1 on the first floor nor carrying out business in Shop No.1 which is situate on the ground floor. He submitted that under the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'), there was no requirement of executing tenancy agreement in writing. Equally, there was no requirement for registering the tenancy agreement. The change is brought in force after commencement of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). He has invited my attention to the discussion of the trial Court on this point which is to the effect that under the old Act, there was no requirement of law of executing tenancy agreement in writing. If that be so, there is equally no necessity in law of cancelling the tenancy agreement by executing writing to that effect. He submitted that the learned District Judge committed serious error in decreeing the suit on the ground that defendant No.1 failed to establish surrender of tenancy by the plaintiff on receipt of Rs. 45,000/-. He submitted that defendants No.2 and 3 supported the case of defendant No.1 that the plaintiff has surrendered her tenancy rights. Mr. Prabhune submitted that in any case, defendant No.1 is lawful sub tenant inducted in the suit premises. He, therefore, submitted that impugned order deserves to be set aside.

6. I have considered submissions advanced by Mr. Prabhune. I have also perused the material on record. It is not in dispute that defendants No.2 and 3 inducted the plaintiff as a tenant in respect of Room No.1 situate on the first floor and Shop No.1 situate on the ground floor by executing tenancy agreement on 29th November, 1985. It is the case of defendant No.1 that the plaintiff had shifted to her native place in the year 1987 after surrendering tenancy rights upon receipt of Rs. 45,000/-. The learned trial Judge dismissed the suit by accepting case of defendant No.1 that there is no requirement under the old Act of entering into written tenancy agreement. As against this, the

learned District Judge has considered admissions given by defendant No.1 during the course of his cross-examination and in particular in paragraph 13. The learned District Judge noted that there is no document to show that tenancy agreement was cancelled. There is no document to show that tenancy was surrendered by the plaintiff. There is also no material to indicate that defendant No.1 had paid Rs. 45,000/- to the plaintiff. On the contrary, witness examined by defendant No.1 admitted that plaintiff's sons are residing in Room No.1 and their names are also included in the ration card.

7. Mr. Prabhune submitted that the plaintiff has surrendered her tenancy rights in the year 1987. Defendants No.2 and 3 inducted defendant No.1 as a tenant. Thus, defendant No.1 has become direct tenant of defendants No.2 and 3. For the reasons recorded by the learned District Judge in paragraphs 13 and 14 of the impugned order, I do not find any merit in this submission. Mr. Prabhune alternatively submitted that if it is held that plaintiff is the tenant, defendant No.1 has become lawful sub tenant in respect of the suit premises. It is not possible to accept this submission as well. Defendant No.1 specifically came with the case that in the year 1987, the plaintiff had left for her native place in U.P and had surrendered tenancy. As defendant No.1 was not inducted in the suit premises prior to 1st February, 1973, he cannot claim to have become lawful sub tenant.

8. Lastly, Mr. Prabhune submitted that the plaintiff had surrendered her tenancy rights in the year 1987 and the suits are instituted in the year 2008. In view of Article 58 of the Limitation Act, 1963, the suit are clearly barred by law of limitation. It is not possible to accept this submission for more than one reason. In the first place, no such plea was taken by the defendants. Secondly, the learned trial Judge did not frame any issue in respect of limitation. Apart from that, even the learned District Judge did not frame any

point in respect of limitation. I have already upheld the findings of the learned District Judge that the defendants have not established surrender of tenancy rights by the plaintiff. In any case, question of limitation is a mix question of law and fact. For the first time, in this Court defendant No.1 cannot be permitted to agitate this point. The Courts below have held that the plaintiff had established that defendant No.1 had illegally got transfer of rent receipt in collusion with defendants No.2 and 3.

9. Defendant No.1 is not in a position to demonstrate that the findings recorded by the District Court are perverse being based on no evidence or that they are contrary to the evidence on record. Defendant No.1 is not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the District Court. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petitions fail and the same are dismissed.

[R.G. KETKAR, J.]