

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 104 OF 1994

1. Shri Ramdhiraj Laxman Dhobi
(since deceased) through legal heir
Ramsharan Laxman Dhobi
Adult, Indian Inhabitant,
Room and Ramdas Dhobighat at
Dhanukar Wadi, M.G. Road,
Kandivli (W), Mumbai – 400 067
2. Shriram Kalketi Dhobi
- 2(a) Shri Devram s/o. Shreeram Kalkati Dhobi
- 2(b) Shri Baliram s/o. Shreeram Kalkati Dhobi
- 2(c) Smt. Chottka Jabar Dhobi s/o.
Shreeram Kalkati Dhobi
- 2(d) Smt. Jubavla Jamalu Dhobi D/o.
Shreeram Kalkati Dhobi
- 2(e) Smt. Lalbachhi Mangru Dhobi D/o.
Shreeram Kalkati Dhobi,
all adults Indian Inhabitants
through their duly constituted
Attorney Shri Mithailal S/o.
Shreeram Kalkati Dhobi
- 2(f) Shri Mithailal S/o. Shreeram Kalkati Dhobi
(since deceased)
- 2(f)(i) Smt. Manju Wd/o. Mithailal Dhobi @ Kanojia
Aged: about 48 years, Occ: House Wife

2(f)(ii) Jitendra S/o. Mithailal Dhobi @ Kanojia
Aged: about 35 yrs, Occ: Business

2(f)(iii) Miss Sunita D/o.Mithailal Dhobi @ Kanojia
Aged: about 26 yrs. Occ: House Wife
All Adult Indian Inhabitant residing
At G Wing, 128, Dhanukarwadi,
Datta Mandir Road, Kandivali (W),
Mumbai – 400 067

3. Shri Ramdhani Ramkaran Dhobi
(since deceased)

3(a) Smt.Prabhavatidevi Wd/o. Ramdhani Dhobi
Age: 59 yrs, Occ: Housewife

3(b) Smt.Saroj Santlal Kanojiya
Age : 32 yrs, Occ: Housewife

3(c) Shri. Santlal Dhasrath Kanojiya
Age: 33 yrs, Occ: Dhobi,
All present residing at Ramdas Dhobi Ghat,
Datta Mandir Road, Dhanukar Wadi,
M.G. Road, Kandivli (W),
Mumbai 400 067

...Appellants

Versus

1. Shri Ramdas Behari Dhobi
(since deceased) through his legal heirs

1/1 Shyamkala Ramdas Dhobi

1/2 Kishorekumar Ramdas Dhobi

1/3 Ramkumar Ramdas Dhobi

1/4 Dhanpata Babulal Dhobi

1/5 Bharti Shiaram Dhobi
Residing at Dhanukmar Wadi,
M.G. Road, Kandivli (W),
Mumbai – 400 067 ...Respondents

WITH

CIVIL REVISION APPLICATION NO. 788 OF 2011

1. Shri Ramdas Bihar Dhobi
(since deceased) deleted
- 1(a) Shyamkala wife of Ramdas Dhobi
(since deceased) deleted
- 1(b) Kishorekumar son of Ramdas Dhobi
- 1(c) Ramkumar son of Ramdas Dhobi
- 1(d) Dhanpata D/o. of Ramdas Dhobi
All Adults. India Inhabitants, Room at
Ramdas Dhobighat at Dhanukar Wadi,
Mahatma Gandhi Road, Kandivali (W),
Bombay – 400 067.
- 2 Shri A.W. Pereira
(since deceased) deleted
- 2(a) Shri Nikhil Keith Pereira
Adult. India Inhabitant, Room at 79,
Carter Road Bandra,
Bombay 400 050 ...Applicants

Versus

- 1 Shri Ramdhiraj Laxman Dhobi
(since deceased) deleted

1(a) Shri Ramsharan Laxman Dhobi
Room and Dhobighat at Dhanukar Wadi,
Mahatma Gandhi Road, Kandivali (W),
Bombay 400 067 ...Respondent

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Mr.V.T. Lulia for the Appellants in First Appeal No. 104 of 1994 and for the Respondent in CRA No. 788 of 2011.

Ms. Mahek Bookwala and Mr. Abbas Zaidy i/b. Zohair & Co.,
for Respondent Nos. 1 (1) to 1 (5) and the Applicants in CRA
No. 788 of 2011.

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CORAM : MRS.MRIDULA BHATKAR, J.
RESERVED ON : 15th FEBRUARY, 2018
PRONOUNCED ON : 25th APRIL, 2018

JUDGMENT:

1. This First Appeal and Civil Revision Application are taken together and decided by a common judgment, as the issue involved is about grant of injunction. There are two proceedings. One is filed by the landlord and another is filed by the tenant. In order to avoid confusion, the parties are referred to their original status as a landlord and tenants.

2. Both the landlord and the tenants are Dhobis by occupation. There is no dispute that the landlord had created tenancy in respect of one plot situated at Survey No. 163, Dahanukar Wadi, Kandivali (West) admeasuring 6296.66 sq. yards in favour of the tenants along with the present tenant. There are other 12 tenants at Dhobhighat and also there are three water tanks. There is open space, which was used for drying the clothes by all the tenants. The room situated at Survey No. 163 was let out in the year 1963 for Rs. 30/-. Thereafter, the landlord prohibited the tenants from using the plot for drying the clothes.

3. It is the case of the landlord that the money was paid towards rent for using the plot situated at Survey No. 163 and the same amount was paid towards water charges for the use of water tanks. The open land was used by all the tenants with the permission of the landlord for the purpose of drying the clothes. It is pleaded that the tenants have right in that open land and, therefore, they should be prohibited from using the open space for drying the clothes. The landlord had filed S.C.Suit No. 7192 of 1982 against 12 tenants

including the present tenant in the City Civil Court, Mumbai for permanent injunction. The relief sought by the landlord is that the tenants be restrained from interfering with peaceful possession of the landlord over the plot situated at Survey No. 163, Dahanukar Wadi, Kandivali. The learned Judge of the City Civil Court, Mumbai decreed the Suit No. 7191 of 1982 on 22nd July, 1983 and directed the tenants not to interfere with peaceful possession, use and occupation of the suit plot of the landlord. Against the said judgment and decree, the present tenant has filed First Appeal No. 104 of 1994.

4. The tenant had also filed R.A.D.Suit No. 1500 of 1981 against the landlord in the Small Causes Court for permanent injunction that the tenant should not be restrained from using the open plot of the land, which was used for the purpose of drying the clothes. The said suit was decreed by the judgment and order dated 15th January, 2010 passed by the learned Judge of the Small Causes Court, Bandra, Mumbai. The said judgment and decree passed by the learned Judge of the Small Causes Court was modified by

the Appellate Bench of the Small Causes Court in Appeal No. 26 of 2010. In the said Appeal, the landlord was directed not to dispose the tenant from the suit room admeasuring 10' X 10' comprise veranda of 8' X 10' without following due process of law and the legal heirs of the landlord are permanently restrained from obstructing the tenant to use Dhobhighat comprise with water tanks, bleaching tanks, drying places of dhobi to wash, bleach, clean and dry clothes. Against the judgment and order dated 12th October 2010 passed by the Appellate Bench of the Small Causes Court, Bandra, Mumbai, the legal heirs of the landlord have filed present Civil Revision Application No. 788 of 2011. Hence, these two matters where the injunction is granted by the Small Causes Court, Mumbai against the landlord and injunction granted by the City Civil Court, Mumbai against the tenants in respect of Dhobighat i.e., the place of washing and drying the clothes by the tenants. Thus, these are conflicting judgments passed by two different FORA in respect of the suit premises where the same parties are involved and, therefore, the First Appeal and Civil Revision Application are taken together.

5. Ms. Mahek Bookwala, the learned Counsel for the landlord argued that the suit filed for injunction either by the landlord or tenant in the Small Causes Court, Mumbai is not maintainable in view of bar under Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the said Act). She relied on the judgment of this Court in the case of ***Packing Paper Products vs. Nica Private Ltd. and anr.*** reported in ***2008 (2) BomCR 879***. She has submitted that the judgment and order passed by the Appellate Bench of the Small Causes Court is not legal and is to be set aside. She has further submitted that considering the evidence of the landlord and tenant, the trial Court so also the Appellate Bench of the Small Causes Court ought to have appreciated that the tenants have limited right restricted to only one room and veranda, which is tenanted premises. Dhobhighat and drying places have never treated as tenanted premises. The learned Judge of the Appellate Bench of the Small Causes Court has committed error in granting injunction in favour of the tenants by allowing them to use Dhobhighat for the

purpose of washing and drying the clothes.

6. Per contra, Mr.Lulia, the learned Counsel for the tenant defended the judgment and order passed by the Appellate Bench of the Small Causes Court, Mumbai. He has pointed out the relevant portion from the evidence of the landlord and tenant in respect of the payment of rent. He has submitted that the landlord and tenants had shifted in the year 1963 to Kandivali. The landlord had purchased a big plot and the said plot was used as washing area. He has further submitted that there are 3 to 4 water tanks and 4 choolas (Bhatti) were using for the purpose of drying and bleaching. He has further submitted that the present tenant and other tenants were using the entire area of the plot, which is open plot for the purpose of drying the clothes. It is a big portion of the land used by the tenants for the purpose of drying the clothes. He has further submitted that the tenants were using the entire portion for the purpose of washing and drying the clothes since 1963 for which the landlord had not objected till filing of the suit. The learned Judge of the City Civil Court has erred in not considering the

nature of the occupation of the tenants and the landlord. He has further submitted that the landlord has given admissions that he was accepting the rent towards tenanted premises so also for the purpose of washing clothes at the water tanks. It is absurd to allow washermen to only wash the clothes and not to allow them to dry the washed clothes. He has pointed out that in the present set of facts, the tenancy was given for the suit room and also for the purpose of washing and drying the clothes, which is very much permissible and the tenants should be protected. He has relied on the following cases:

(i) ***Kamal Babanrao Pasalkar Versus Vivekanand Chandrakant Patil*** reported in ***2009 (Supp.1) Bom. C.R. 516.***

(ii) ***Nilesh Nandkumar Shah Versus Sikandar Aziz Patel*** reported in ***(2002) 6 SCC 678.***

(iii) ***Maganlal Parsottamdas Sevniwala Vs. Chimanlal Dahyabhai Modi*** reported in ***AIR 1980 Guj 14.***

(iv) ***Abdul Kader versus G.D.Gaikwad (Dead) by LRS & Ors*** reported in ***2002 Bom. R.C. 363.***

7. In the present matter, the relationship between the landlord and tenant is not disputed. The suits were filed against each other. The City Civil Court, Mumbai granted relief in favour of the landlord and directed the tenants not to interfere with peaceful possession, use and occupation of the land of the landlord and also the landlord shall put the boundary wall fencing on the suit plot. The tenants have also filed R.A.D.Suit No. 1500 of 1981 against the landlord in the Small Causes Court, Bandra, Mumbai for injunction that the tenants should not be restrained from using the open plot. In both the suits, parties have asked for injunction against each other for non-interference with peaceful possession. No relief on the point of declaration or possession was asked for. The Court has to consider this position and by applying three principles of the law of injunction i.e., *prima-facie*, *balance of convenience* and *irreparable loss*, the suit can be decided.

8. In the present case, the tenants have proved the tenancy in respect of the suit room and use of the water tanks for the purpose of washing the clothes. Thus, once the

tenants have proved the right to wash, then some place for drying the clothes is required, however, the tenants could not prove that they were paying rent for drying the clothes in the entire open plot. Some portion of the open plot can be given to the tenants only for the purpose of drying the clothes to give correct meaning of the tenancy, but at the same time no exclusive right in their favour can be created in the said portion of the plot.

9. The submission of Ms.Bookwala, the learned Counsel for the landlord, that the suit for injunction can not be filed by the landlord or tenant in the City Civil Court, Mumbai is not a correct law in view of the ratio laid down in the case of ***Prabhudas Damodar Kotecha & Ors. vs. Manhabala Jeram Damodar and anr.*** reported in ***2007 (5) Mh. L.J. 341 (FB)***. This Court has held that “*essentially seeks to protect tenants from actions for recovery of possession or those relating thereto. It does not go further. It specifically omits and does not protect landlords seeking injunction. Consequently under Section 28 the inherent jurisdiction granted to the Special Court is only for matters relating to*

recovery of rent, and matters relating to recovery of possession. The Suit for injunction, therefore, must continue to remain only in the Civil Court". Thus all the issues in respect of the tenanted premises can be referred and decided by the Bombay Small Causes Court. However, while approaching the City Civil Court, Bombay, the landlord has pleaded that the tenants have encroached upon the premises, which is not tenanted premises and, therefore, he has rightly filed the Suit in the City Civil Court.

10. In the case of **Kamal Babanrao Pasalkar** (*supra*), it is held that *"it is settled law that observations passed in interlocutory proceedings are not binding at the final hearing of the suit"*.

11. In the case of **Nilesh Nandkumar Shah** (*supra*), the Supreme Court has held that a composite tenancy or a tenancy granted for the mixed purpose of residential and commercial can exist. It is further held that when the premises are let out under one integrated contract of

tenancy, however, the purpose of letting in respect of one part of the premises is one of the users referred and the other part of tenancy premises is permitted to be used for purpose other than the one stated in Section 6 (1) of the Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947. No partial decree of eviction can be passed and the purpose of Rent Control Legislation is to protect the tenants from unjust evictions at the hands of greedy or unscrupulous landlords. In the present case, the rent is accepted for two premises and considering occupation of the tenants, the order of injunction cannot be passed in respect of the entire area.

12. In the case of **Maganlal Parsottamdas Sevniwala** (*supra*), the issue whether the tenant had right to use the latrine was before the Court. The fact of irrevocable tenancy in respect of the room is established. It is not necessary for him to make out any new case.

13. In the case **Abdul Kader** (*supra*), the Court has taken view that the Supreme Court has held that the term 'rent' has

not been defined in the Act. *“The terms 'rent' is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord”.*

14. In view of this, reliefs claimed and evidence of the parties to be taken into account. The landlord has admitted that he was charging Rs. 10/- towards rent of the rooms and Rs. 30/- p.m. towards water charges, which were using by the tenants for washing clothes.

15. In cross-examination-in-chief before the City Civil Court, the landlord has deposed that the tenants were doing the business of Dhobis. They were used to dry the clothes on the suit plot and he was also used to dry the clothes at the same place. He has further deposed that the tenants were using 50% of the portion of the suit land for drying the clothes and 50% portion of the suit land was lying vacant. In

para 9 of the cross-examination, he has further deposed that since 1981 the tenants are not paying rent to him. He was not charging rent to these tenants for drying washed clothes on the suit plot. In para no. 15 of the cross-examination, he has further deposed that in the year 1975, only the tenants used to wash their clothes at Dhobighat. The landlord was charging the water charges approximately from Rs. 100 to Rs. 1300/- per quarter of the year. After 1975, the tenants started paying him municipal water charges. He admitted that he had never given bill to the tenants for making payment of the bills of the Corporation. He has also admitted that all these Dhobis were initially at Mahim and they all were shifted to Kandivali in the year 1963. All the tenants used to pay Rs. 20/- to Rs. 25/- p.m. towards rent in the year 1963 and thereafter, he increased the rent to Rs. 40/-. He has further deposed that in the year 1973, a Court Receiver was appointed by the Court and he used to collect Rs. 30/- p.m. towards rent from the tenants. He admitted that he gave receipts for the payment of the land to the tenants. The receipts of the payment were taken on record and marked as **Exhibit-3 (colly) and**

Exhibit 4 (colly).

16. In the City Civil Court, the Court Commissioner submitted his report dated 1st February, 1983. In the report, he has mentioned the details about the then existing structure, open land and also about the fencing. He has further mentioned that inside the fencing, three water tanks, one Bhatti of four choolas were found. Out of the said water tanks, one tank consists of six compartments and another consists of three compartments. The wooden poles of the said barbed wire fencing, have fallen at place. One wooden pole fallen at the south west. There is an open land on the east side of the suit site, where he noticed some wooden sticks or bamboos with rope or sticks erected for the purpose of drying clothes and the ropes are tied to the small wooden khambas, which are rooted in the ground.

17. It appears that the Court Commissioner is not examined as a witness. Hence, the report goes unchallenged. There is reliable evidence so also the admissions given by the landlord that the tenants were

paying separately for room and for water charges, as the amount was bifurcated in two parts. One is towards the rent of the room and second is towards the use of water tanks. There was one water tank only that can be useful for the landlord to do his business, but the landlord had constructed three water tanks and there was one Bhatti of four chulas. The report of the Court Commissioner discloses that there are wooden sticks or bamboos with rope or sticks, which was erected for the purpose of drying washed clothes.

18. The nature of the occupation of the landlord and the tenant has an important bearing on the issue of tenancy. Both the parties are Dhobis by occupation, so plenty of water for washing clothes and open space for drying washed clothes is required, only washing clothes is not sufficient. One Bhatti with four 'chulas' shows that it was used for the purpose of complete the process of washing, bleaching and cleaning clothes in a particular manner so also for drying washed clothes. No washerman is expected to give wet clothes to his customers. The washerman is expected to wash, dry and iron the clothes and handover to the

customers. These all the tenants are carrying on their business as Dhobis since 1965 along with the landlord. The learned Judge of the City Civil Court has also mentioned that the landlord is no more interested in the occupation of Dhobi and there was rift between the landlord and tenants and, therefore, the landlord had filed the suit for injunction. The landlord had not filed the suit for possession, but it is only for injunction and thus, the Court has to see whether the tenants are in lawful occupation of the suit premises or not.

19. From the evidence, it can be gathered that the tenants were allowed to wash and dry the clothes in the open land. However, this open land is a big portion of the land and, therefore, in order to keep balance between use and enjoyment of the land by both the parties, I am of the view that some restriction is to be put on the tenants for using the area for the purpose of drying washed clothes. It is to be noted that nowhere the tenants have established that how much area they were allowed to wash and dry the clothes. It is also not the case that the tenants are in exclusive possession of the suit premises and the landlord has lost

possession. It is the case where the tenants are using the premises with permission of the landlord only for washing and drying the clothes for which the tenants were charged. Under such circumstances, no injunction order in respect of the entire land can be granted in favour of the landlord, and the order passed by the learned Judge of the City Civil Court granting injunction in favour of the landlord is required to be modified. A limited portion can be allowed to the tenants only for the purpose of washing and drying the clothes so that the landlord can use the remaining area without any interference by the tenants.

20. Thus, I am of the view that this equitable relief will meet the ends of justice, if some area is earmarked for the purpose of only drying the clothes for the tenants, but the tenants have no right in the suit plot, as the landlord has not lost the possession over the entire suit plot. Hence, the order dated 23rd April, 1993 passed by the learned Judge of the City Civil Court, Mumbai is hereby modified. The area of 5000 sq.ft. is earmarked for the tenants only for the purpose of drying the clothes though the landlord is in the possession

of the said area and the entire plot. The said area around or near the water tank can be earmarked. The judgment and order dated 15th January, 2010 passed by the learned Judge of Bombay Small Causes Court is otherwise maintained in respect of use of dhobighat comprises with water tanks, bleaching tanks, drying places of dhobi to wash, bleach, clean and dry clothes, but it is restricted to the area of 5000 sq. ft. only.

21. First Appeal is allowed.

22. Thus with modification and earmarking area of 5000 sq. ft only allowing as above to dry the clothes, Civil Revision Application No. 788 of 2011 filed by the legal heirs of the landlord is dismissed and the judgment and decree dated 12th October, 2010 passed by the learned Additional Chief Judge, Small Causes Court, Mumbai in Appeal No. 26 of 2010 is hereby maintained with the same modification.

(MRIDULA BHATKAR, J.)