

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2307 OF 2008

1. Pilloo D. Broacha
Adult, aged about 70 years,
Occupation : Household
2. Dina D. Broacha
adult, aged about 60 years,
Occupation : Household
3. Jeroo D. Broacha
- 3A. Zubin Khurshed Broacha
aged 44 years, Occ. Share Dalal
residing at A-8, Shapoor Baug,
2nd Floor, Vithalbhai Patel Road,
Bombay 400 004.
4. Shapur D. Broacha
Adult, aged about 66 years,
Occupation Household, all
Trustees of Bhichaiji H. Bennett
Trust having its office at
Sir Shapoorji Broacha Baug,
Vithalbhai Patel Road,
Bombay 400 004.

... Appellants.

-vs-

Meena Ramesh Dewadiga
Adult, aged about 35 years,
Occupation Household, Indian
Inhabitant of Bombay, residing
at Flat No.E-4, Sir Shapoorji Broacha Baug,
V P Road, Bombay 400 004.

... Respondent.

Shri Satyan N. Vaishnav with Ms Nupur Mukherjee i/b M/s N. N. Vaishnawa
& Co. for appellants.
Shri S. K. Pathare, Advocate for respondent.

CORAM : A. S CHANDURKAR, J.

Arguments were heard on : November 29, 2018

Judgment pronounced on : December 03, 2018.

Judgment :

This appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred by the original plaintiffs who are aggrieved by the judgment of the Civil Civil Court, Bombay dated 17/10/2008 whereby the suit as filed for a declaration that the respondent-defendant was a trespasser in respect of Flat No.E-4 along with possession of the said flat has been dismissed.

2. It is the case of the original plaintiffs that they are Trustees of Bai Bhichaiji H. Bennett Trust. The said Trust is the owner of the property known as Sir Shapoorji Broacha Baug. Flat No.4 in one of the buildings owned by the Trust was initially let out to one R. D. Bhagat prior to 1982. Said R. D. Bhagat expired in February 1995 and thereafter one Nusli Randelia claiming to be his close friend and relative claimed tenancy rights therein. Said Nusli Randelia along with the present respondent filed R.A.D. Suit No.835 of 2006 in the Court of Small Causes Court at Bombay claiming to be a tenant of the suit premises. According to the plaintiffs said Nusli Randelia had pleaded in paragraph 1 of that plaint that he was the employer of the plaintiff No.2-the present defendant. The said Nusli Randelia

expired on 08/05/2006. According to the plaintiffs on the death of said Nusli Randelia, the defendant became an unlawful and illegal occupant of the suit premises and was thus a trespasser. She had no right, title or interest therein and was liable for eviction. On the aforesaid pleadings the plaintiffs filed Short Cause Suit No.3026 of 2007 before the Civil Civil Court, Bombay.

3. The defendant filed her written statement on record at Exhibit-2. It was denied that the defendant was trespasser and that as she was in possession of the suit flat for a period of more than twelve years, she had become a deemed tenant under provisions of the Maharashtra Rent Control Act, 1999 (for short, the said Act). Reference was also made to the suit filed in the Small Causes Court seeking a declaration in that regard. The defendant admitted that late R. D. Bhagat was the original tenant and after his death Nusli Randelia and the defendant started residing there. Rent was accepted by the plaintiffs from deceased Nusli Randelia till November 2005. The defendant was in possession of the suit flat and was residing there along with her family members. It was thus her case that she was not a trespasser as claimed by the plaintiffs and the suit as filed was liable to be dismissed.

4. The plaintiffs examined plaintiff No.1 on their behalf. She deposed as per the plaint averments. In her cross-examination she stated

that she was not aware of any notice issued by the defendants before filing the suit in the Small Causes Court. She admitted that the defendant had paid rent up to November 2005 and that she might be residing in the suit premises for a period of 25 years.

5. The defendant examined herself and deposed on the lines of her written statement. In her cross-examination she admitted that her mother was a sweeper doing the job of sweeping in Shapoorji Compound. She did not belong to Parsi religion and that during the life time of her mother they were residing in a shed situated behind the building. She further deposed that Nusli Randelia had come to reside in the suit flat along with his wife and that she was working as a maid servant for Nusli Randelia. She further admitted that she was not related either to R. D. Bhagat or Nusli Randelia.

6. The trial Court considered the aforesaid evidence on record and held that the plaintiffs had failed to prove that the defendant was a trespasser. It relied upon the admission of the plaintiff's witness that rent had been paid till November 2005 by the defendant which indicated that the plaintiffs recognized her as a tenant. On that basis the suit as filed came to be dismissed. Being aggrieved the plaintiffs have filed the present appeal.

7. Shri S. Vaishnav, learned counsel for the appellants submitted that in the light of the admitted position that the defendant was not related either to R. D. Bhagat or Nusli Randelia, she could not be treated to be a member of the family of either of them. The defendant had admitted in her cross-examination that initially her mother and thereafter she was working as a maid servant with the occupants of the said flat. Thus in absence of the defendant being a blood relative of the original tenant or Nusli Randelia, she could not claim to be a family member and on the death of Nusli Randelia her occupation became unauthorised and she was thus liable to be evicted. In support of aforesaid submission the learned counsel placed reliance on the decision in *Jaysen Jayant Rele and ors. vs. Shantaram Ganpat Gujar and ors.* AIR 2002 Bom 462, *Baldev Sahai Bangia vs. R. C. Bhasin* (1982) 2 SCC 210, *Bhavarlal Labhchand Shah vs. Kanaiyalal Nathalal Intawala* (1986) 1 SCC 571 and *Kailasbhai Shukaram Tiwari vs. Jostna Laxmidas Pujara and anr.* (2006) 1 SCC 524. It was then submitted that the admission of plaintiff No.1 in her cross-examination that rent had been paid by the defendant till November 2005 had been misconstrued by the trial Court. The rent for the aforesaid period had been accepted as that being paid by Nusli Randelia and same would not amount to the plaintiffs' accepting the defendant as a tenant. It was submitted by relying upon the decisions in *Harshavardhan Chokkani vs. Bhpendra N. Patel and ors.* (2002) 3 SCC 626 and *Sheodhari Rai and ors vs. Suraj Prasad Singh and*

ors. AIR 1954 SC 758 that by merely paying rent a person in occupation would not become a tenant and that by itself was not the determining factor. It was thus submitted that in the light of the evidence on record the trial Court misdirected itself while coming to the conclusion that the plaintiffs had failed to prove that the defendant was a trespasser.

8. On the other hand Shri S. K. Pathare, learned counsel for the respondent-defendant supported the impugned judgment. It was submitted that the present defendant had filed a substantive suit before the Small Causes Court for a declaration that she was a tenant of the suit property. That suit was filed prior in time to the present suit. The defendant was in possession even prior to 1995 and her presence was never objected to by the plaintiffs nor was any notice issued to her to vacate the suit premises. As the aspect of the claim of the defendant of being a tenant was being adjudicated by the Small Causes Court, it was not permissible to come to the conclusion that she was a trespasser with regard to the suit premises. The learned counsel also referred to the admission of the plaintiff's witness in her cross-examination that rent was accepted from the defendant till November 2005. It was then submitted that there was no pleadings in the plaint that there was no blood relationship between Nusli Randelia and the defendant and therefore it was not permissible for the civil Court to have gone into that aspect. It was submitted that the trial Court rightly considered the entire

evidence on record and dismissed the suit. Moreover any adjudication as to the status of the defendant would prejudice the rights of the defendant in the suit filed by her seeking a declaration that she was a tenant. It was thus submitted that the appeal was liable to be dismissed.

9. In the light of the aforesaid submissions the following points arise for determination :

- (i) *Whether the plaintiffs have proved that the defendant was a trespasser ?*
- (ii) *Whether the judgment of the trial Court calls for any interference ?*

10. I have the learned counsel for the parties at length and with their assistance I have also gone through the records of the case. As per the averments in the plaint it can be seen that it is the specific case of the plaintiffs that the Trust was the owner of the suit property which was initially let out to R. D. Bhagat. After his death in February 1995, Nusli Randelia claiming to be his close friend and relative started residing there and claimed tenancy rights. Reference was made to the suit filed in the Small Causes Court by said Nusli Randelia along with the defendant herein in which it was pleaded that said Nusli Randelia was the employer of defendant herein. According to the plaintiffs after the death of said Nusli Randelia on 08/05/2006 the defendant had no legal right to continue in

occupation of the suit flat and that she was a trespasser.

In the written statement as filed by the defendant it was admitted that R. D. Bhagat was the original tenant and after his death Nusli Randelia and the defendant started residing there. Till November 2005 rent was accepted by the plaintiff from Nusli Randelia and the defendant. Reference was also made to the suit for declaration of the status as a tenant being filed by Nusli Randelia and the present defendant before the Small Causes Court

11. In the light of these pleadings if the deposition of the plaintiffs' witness No.1 is perused it can be seen that said witness has reiterated the averments made in the plaint and in her cross-examination it was admitted that the defendant had paid rent up to November 2005. In so far as the evidence led by the defendant is concerned, her admissions in her cross-examination are material and same are being reproduced herein :

“ My mother died about 15 years back. My mother during her lifetime was residing in a shed situated behind Shapoorbaug Building. My mother was Sweeper and doing job of sweeping in the Shapoorbaug Compound. I am Gujarati by religion. I am not Muslim, I am not Christian, I am not Parsi or Boudha. I was residing alongwith my mother in the said shed. Rustoomji Bhagat was not unmarried. He had no issues. He was Parsi by religion. After a death of Mr Rustoomji Bhagat his relative Mr Nasli Randeliya started residing in the suit premises. It is not correct that Mr Nasli was unmarried. It is correct that, he also had no issues.

Mr Nasli came to reside in the suit premises alongwith his wife. It is correct that, I was working as maid servant for Nasli (Witness volunteers that, even prior to Nasli her mother was maid servant of Mr Rustoomji Bhagat). It is correct that I am not related to Rustoomji Bhagat or Mr Nasli.”

From the aforesaid it can be seen that it is an admitted fact that R. D. Bhagat was the original tenant and after his death in February 1995 Nusli Randelia started residing therein. The defendant's mother was a sweeper doing the job of sweeping in the entire compound where various buildings were located. The defendant also admitted that she was working as a maid servant for Nusli Randelia and that earlier even her mother was the maid servant of R. D. Bhagat. She also admitted that she was not related either to R. D. Bhagat or Nusli Randelia and that she was not a Parsi by religion.

12. The question to be considered in the light of the pleadings of the parties is whether the defendant could be said to be a trespasser especially after the death of Nusli Randelia. While doing so it would be necessary to refer to the observations in paragraph 42 of the decision in ***A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President etc. 2012(4) SCALE 666*** which read thus :

“ 42. On the facts of the present case, following principles emerge :

....

6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.
 7. The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.
 8. The protection of the Court can be granted or extended to the person who has valid subsisting agreement, lease agreement or licence agreement in his favour.
13. A somewhat similar question fell for consideration in **Jaysen Jayant Rele and ors.** (supra) before a learned Single Judge of this Court. The plaintiff therein had filed a suit in the civil Court seeking mandatory injunction to remove the defendants from the suit premises along with a prayer for delivery of vacant possession. According to the plaintiff the defendants in occupation were not members of the family of the original tenant and they had no right to continue to occupy the suit premises and

were hence trespassers. The learned Single Judge took into consideration the expression “ family of the tenant” and found on the basis of earlier decisions that a stranger to the family in question could not be said to be its member. It was observed that in absence of any blood relation with a member of the family, a person claiming to be such a member would not be entitled to claim so. It was clearly observed that a domestic servant could not be included to be member of the family how so ever long that association might exist or even if there may a thick relationship in that regard. On the aforesaid premise it was held that the authorisation given by the tenant occupying the premises came to an end with his death and thereafter the occupants became trespassers. Reference was also made to the decision in **Baldev Sahay Bangia** (supra) by the learned Single Judge for arriving at aforesaid conclusion. The ratio of the aforesaid decision apply to the facts of the present case.

14. When the aforesaid legal position is applied to the facts of the present case, it becomes clear that the defendant in clear terms has admitted in her cross-examination that initially her mother was the maid servant of R. D. Bhagat. Her mother was residing in a shed in the compound of various buildings located therein. After the death of R. D. Bhagat when Nusli Randelia came into occupation of the suit flat, the defendant continued as a servant of Nusli Randelia. In the light of these

clear admissions coupled with the admitted fact that the defendant did not have any relationship with Nusli Randelia it becomes obvious that on the death of said Nusli Randelia, the occupation of the defendant became illegal and the same rendered her liable to be evicted.

15. Though it was vehemently urged on behalf of the defendant that the plaintiffs' witness had admitted that till November 2005 rent had been accepted from Nusli Randelia and the defendant which would indicate creation of rights in favour of the defendant, in the light of aforesaid evidence that contention cannot be accepted. It is well settled that mere acceptance of rent without anything further by itself would not be a determinative factor to confer tenancy rights as observed in *Harshavardhan Chokkani* (supra). Moreover, the admission with regard to acceptance of rent would have to be considered in the backdrop of the pleadings of the parties and their evidence. This factor has heavily weighed with the trial Court while recording finding that the defendant was not a trespasser. In the light of the settled legal position that a servant would not be in a position to acquire interest in the property despite long possession, the aforesaid admission cannot come to the aid of the defendant.

16. Thus on consideration of the pleadings and the evidence of the parties it is found that the trial Court without considering the aforesaid

material in the proper perspective and merely on the basis of the statement of the plaintiffs' witness that rent till November 2005 was accepted from Nusli Randelia and the defendant proceeded to hold that the defendant was not a trespasser. The said finding cannot be sustained.

Point No.(i) is accordingly answered by holding that the plaintiffs have proved that the defendant was a trespasser in the suit premises after the death of Nusli Randelia.

17. The facts on record indicate that the defendant herein along with said Nusli Randelia had filed a suit for declaration of their status as the tenants of the suit flat. That suit is pending before the Small Causes Court. Though it was urged on behalf of the defendant that adjudication of the question as to the status of the defendant in the present appeal would prejudice the rights of the defendant in that suit, suffice it to clarify that this Court has merely answered the question whether the defendant was a trespasser or not. Once it is found on the basis of the pleadings of the parties and evidence led by them that the defendant was merely a servant of Nusli Randelia as admitted by her coupled with the fact that there was no blood relationship between said Nusli Randelia and the defendant, it becomes obvious that on the death of said Nusli Randelia the status of the defendant becomes that of a trespasser. This Court has not gone into the question as to entitlement of the defendant as regards her claim of being a

tenant under provisions of Section 7(15) of the said Act which question falls within the domain of the Small Causes Court. Suffice it to say that in the light of the admitted fact that the defendant was a servant of Nusli Randelia, her continuation in the suit flat after the death of Nusli Randelia becomes unauthorised thus leading to her eviction. The plaintiffs are thus found entitled to the relief of declaration and eviction as prayed for. Point No.(ii) stands answered accordingly.

18. As a result of it being held that the defendant was a trespasser in the suit after the death of Nusli Randelia, the following order is passed :

- (1) Small Cause Suit No.3026 of 2007 is decreed in terms of prayer clauses (a) and (b).
- (2) There shall be separate enquiry for grant of mesne profits for which the plaintiffs are at liberty to take appropriate steps.
- (3) The defendant is granted time of three months to vacate the suit flat and hand over possession to the plaintiffs.
- (4) Decree be drawn accordingly in aforesaid terms with parties being directed to bear their own cost.
- (5) First Appeal No.2307 of 2008 is accordingly allowed with there being no order as to costs.

(A. S. CHANDURKAR, J.)