

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 3833 OF 1995

Bai Laxmibai Sakham Genoo & Ors. .. Petitioners

Vs.

Dr. Aspi Golwalla & Ors. .. Respondents

Mr. Surel S. Shah i/b Mr. N. K. Mudnaney for the Petitioner.
Mr. Vaibhav Sugdare a/w. Ms. Trupti Khadse, Mr. Prasad Sawant, Ms.
Divya Tyagi i/b M/s. Jayakar & Partners for the Respondents.

CORAM : PRADEEP NANDRAJOG, C.J.
DATE : 26th JULY, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. Ejectment Application No. 169/E of 1976 was filed by the trustees of Parsi Panchayat Funds and Properties seeking decree of possession against the legal heirs of one Sakham Genoo on the plea that services of deceased were availed of as a Mali and he was put in possession of Kholi No. 15 at Ambawadi, Doongarwadi Estate, Gibbs Road, Mumbai for which a writing dated 01.03.1961 was executed by the deceased. Occupation charges in a sum of ₹ 7.50 p.m. and ₹ 3/- towards electricity were charged. That on the death of Sakham Genoo on 18.03.1975 his employment ceased. Notice dated 25.09.1975 was issued to the legal heirs calling upon them to hand over vacant physical

possession of the Kholi.

3. Suffice it to state that meaningfully read, the ejectment application pleads that the deceased was a licensee in the subject premises to occupy the same till he was in service and ₹ 7.50 p.m. was charged towards license fees.

4. The legal heirs of the deceased claimed that the deceased was a contractual tenant.

5. Vide decision dated 20.11.1985 the learned Judge, Small Causes Court at Bombay held that the legal heirs had not proved that the deceased was a contractual tenant. The learned Judge held that the evidence established that the deceased was a service tenant. The Judgment holds that the deceased was permitted to occupy the Kholi in question during his service and no more.

6. The words service tenant appears to have been used on account of fact that under Section 13(1)(f) of the Bombay Rent Control Act, 1947 a landlord is entitled to seek ejectment of a person inducted as a tenant being in service or employment of the landlord and the tenant has ceased to be in service or employment.

7. Order dated 20.11.1985 would have resulted in the landlord being forced to seek ejectment under Section 13(1)(f) of the Rent Control Legislation of the year 1947. As regards the legal heirs of the deceased, they would have got a limited right to defend the said proceeding. Thus both were filed appeal.

8. The legal heirs filed Appeal No. 22 of 1986 against the order dated 20.11.1985. The trustees filed Appeal No. 64 of 1986 against the said order. Both Appeals were disposed of on 12.07.1985, albeit by

separate orders. The principal reasoning is in Appeal No. 64 of 1986. The second order of even date simply disposes of the Appeal filed by the legal heirs on the reasoning incorporated in the former order.

9. The order dated 12.07.1985 holds the deceased to be in service occupation/licensee.

10. There is no definition in any law of a service occupant or a service tenant. The concept of a service occupant or service tenant arises out of Section 13 (1) (f) of the Rent Act, which entitles the landlord to eject the tenant if it is established that the tenancy was a condition of service or employment and the tenant has ceased to be in employment. Thus, at base the debate between the parties was whether the deceased was a tenant or a licensee.

11. The issue has to be resolved with reference to the documents exhibited. The exhibited documents being Exhibit B and Exhibit 2. Exhibit B is a writing dated 01.03.1961 when the deceased was put in possession of the Kholi and suffice it to highlight that the deceased was allotted the premises being in service as Mali and therefore minimum charges i.e. concessional charges were being taken from him. The document has not been drafted by a legal expert. The intention is to let the deceased occupy the premises without any right as a tenant. The right is that of licensee to occupy the Kholi till he was in employment of the trust as a Mali.

12. Being proceeding under Section 227 of the Constitution of India, the jurisdiction of the Court is limited. I find no merit in the impugned Judgment interpreting Exhibit B. Exhibit 2 which is a rent receipt supporting the interpretation of Exhibit B. There is a reference of

another receipt Exhibit C which also supports the view that the right was that of the licensee.

13. I find no merit in the Petition.

14. The same is dismissed.

15. No costs.

[CHIEF JUSTICE]