

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1964 OF 1998

Parubai Vithal Kamble and others.	]	Petitioners
Vs.		
Girdharilal Agarwal	]	Respondent

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Mr. P.N. Joshi, learned Counsel for the Petitioners.
Ms. Shaba N. Khan i/b R.V. Govilkar, for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 1st FEBURARY, 2019.

JUDGMENT:

Heard Mr. Joshi, learned Counsel for the petitioners and Ms. Khan, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as "defendants' have challenged the judgment and decree dated 20th December, 1997 passed by the learned IV Extra Joint District Judge, Pune in Civil Appeal No.882 of 1995. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter after referred to as 'plaintiff' and set aside the judgment and decree dated 11th August, 1995 passed by the learned II Additional Small Causes Judge, Pune in Regular Civil Suit No.1186 of 1990. The learned District Judge decreed the suit and directed the defendants to deliver vacant and peaceful possession of two rooms admeasuring 18'x39' square meters in Amirchand Chawl situate at C.S. No.24A, Bopodi, more particularly described in paragraph

1 of the plaint. The relevant and material facts, that are necessary for disposal of the present Petition, briefly stated, are as under.

3. The plaintiff instituted suit against the defendants for recovery of possession, *inter alia*, alleging that defendant No.1 remained in arrears of rent and other charges from 1st June, 1980. The plaintiff issued demand notice terminating tenancy of defendant No.1 and called upon defendant No.1 to comply with the demands made therein. Defendant No.1 gave reply on 29th January, 1989 and denied the contents of the notice. On 11th September, 1990, the plaintiff instituted the suit alleging that defendant No.1 is a defaulter; defendant No.1 had sublet the suit premises to defendants No.2 and 3; defendant No.1 has made permanent construction (ota) in front of the suit premises; defendant No.1 has been causing nuisance and annoyance to the plaintiff and other occupiers and that the plaintiff requires the suit premises reasonably and bona fide. The plaintiff had thus instituted the suit invoking grounds under section 12, 13 (1) (e), 13 (1) (b), 13 (1) (c) and 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'), The defendant filed written statement at Exhibit 11 and resisted the suit. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. By order dated 11th August, 1995, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiff preferred appeal. By the impugned order, the learned District Judge has allowed the appeal.

4. In support of this Petition, Mr. Joshi submitted that the learned District Judge decreed the suit only on the ground of unlawful subletting. The learned District Judge held that the plaintiff proved that defendant No.1 had unlawfully sublet the suit premises to defendants No.2 and 3. The learned District Judge decreed the suit only under section 13 (1) (e) of the Act and declined to pass decree on other grounds. He submitted that the learned

District Judge did not appreciate the ingredients to prove unlawful subletting. Mr. Joshi relied on the decision of **Nirmal Kanta Vs. Ashok Kumar, (2008) 7 Supreme Court Cases 722** and in particular paragraph 16 thereof. In paragraph 16, the Apex Court observed that a sub-tenancy or a subletting comes into existence when the tenant inducts a third party stranger to the landlord into the tenanted accommodation and parts with possession thereof wholly or in part in favour of such third party and puts him in exclusive possession thereof. The lessor and/or a landlord seeking eviction of a lessee or tenant alleging creation of a sub-tenancy has to prove such allegation by producing proper evidence to that effect. He has taken me though the findings recorded by the learned District Judge on the ground of unlawful subletting.

5. On the other hand, Ms. Khan submitted that she has not received any instructions from the plaintiff.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the plaintiff had invoked grounds under section 12, 13 (1) (b), 13 (1) (c), 13(1) (e) and 13 (1) (g) of the Act. The learned trial Judge dismissed the suit. The District Judge allowed the appeal preferred by the plaintiff only under section 13 (1) (e) of the Act. Ms. Khan did not advance any submissions supporting eviction decree on the grounds under section 12, 13 (1) (b), 13 (1) (c) and 13 (1) (g) of the Act. Thus, only question that requires to be examined is whether the plaintiff has established that defendant No.1 has unlawfully sublet the suit premises to defendants No.2 and 3.

7. In the case of **Joginder Singh Sodhi Vs. Amar Kaur, (2005) 1 Supreme Court Cases 31**, the Apex Court has referred to the decision of **Associated Hotels of India Ltd Vs. S.B. Sardar Ranjit Singh, AIR 1968**

Supreme Court 933. In this case, the Apex Court held that in a suit of landlord for eviction of tenant on the ground of subletting, the landlord has to prove by leading evidence;

- (a) a third party was found to be in exclusive possession of the rented property;
- (b) parting of possession thereof was for a monetary consideration.

This settled principle was reiterated by the Apex Court from time to time.

8. In the case of **Shama Prashant Raje Vs. Ganpatrao, (2000) 7 Supreme Court Cases 522**, it was held that two ingredients namely parting with possession and monetary consideration thereof have to be established. The Apex Court also referred decision of **Bharat Sales Ltd Vs. LIC of India, (1998) 3 Supreme Court Cases 1**, where it was observed that subletting comes into existence when the tenant gives possession of the tenanted accommodation, wholly or in part and puts another person in exclusive possession thereof. In the case of **Joginder Singh Sodhi (supra)**, in paragraph 17, the Apex Court also observed that since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet.

9. In case of **Nirmal Kanta (supra)**, the Apex Court observed in paragraph 16 thus;

“What constitutes sub-letting has repeatedly fallen for the consideration of this Court in various cases and it is now well-established that a sub-tenancy or a subletting comes into existence when the tenant inducts a third party stranger to the landlord into the tenanted accommodation and parts with possession thereof wholly or in part in

favour of such third party and puts him in exclusive possession thereof. The lessor and/or a landlord seeking eviction of a lessee or tenant alleging creation of a sub-tenancy has to prove such allegation by producing proper evidence to that effect. Once, it is proved that the lessee and/or tenant has parted with exclusive possession of the demised premises for a monetary consideration, the creation of a sub-tenancy and/or the allegation of sub-letting stands established”.

10. In the present case, the learned District Judge has observed in paragraph 11 that the suit premises was originally let out to one Yesammabai. The plaintiff claimed that defendant No.1 Parubai was no way related to the original tenant. Since she was residing with the original tenant, the plaintiff recognized her as a tenant. The plaintiff alleged that defendant No.1 has sublet the suit premises to defendants No.2 and 3 who are no way related to defendant No.1. The learned District Judge thereafter observed, “admittedly all the 3 defendants are residing in the suit premises”. The question is whether the plaintiff has proved one of the ingredients of subletting. A perusal of the impugned order does not show that the learned District Judge recorded any finding as regards satisfaction of one of the ingredients of unlawful subletting. Before passing decree on the ground of subletting, it is necessary to record a finding to the effect that third party was found to be in exclusive possession of the rented premises. In the present case, no such finding is recorded by the learned District Judge. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside. The appeal will have to be restored to the file of the learned District Judge. The learned District Judge will consider the evidence on record and record finding on the question of unlawful subletting keeping in mind the principles laid down in the above case.

11. In the result, the Petition succeeds. The impugned order is set aside. Civil Appeal No.882 of 1995 is restored to the file of the learned District

Judge. Registry shall forthwith transmit the Record and Proceedings to the District Court. The District Court will issue fresh notice to the parties and will thereafter proceed to decide the appeal within 6 months from completion of service. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]