

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.10950 OF 2016**

Dattatraya Ramchandra Bandre	]	Petitioner
Vs.		
Sumant Sharadchandra Ranade and others.]		Respondents

WITH

WRIT PETITION NO.10968 OF 2016

Dattatraya Ramchandra Bandre	]	Petitioner
Vs.		
Sumant Sharadchandra Ranade	]	Respondent

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Mr. M.J. Jamdar, for Petitioner.
Mr. S.S. Patwardhan, for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 15TH JANUARY, 2019.

P.C:

Heard Mr. Jamdar, learned Counsel for the petitioner and Mr. Patwardhan, learned Counsel for the respondent in both the Petitions at length.

2. Writ Petition No.10950 of 2016 is instituted by Dattatraya Ramchandra Bandre, hereinafter referred to as 'tenant' challenging the judgment and decree dated 2nd November, 2006 passed by the learned Additional Judge, Small Causes Court, Pune in Civil Suit No.531 of 2001 as also the judgment and decree dated 5th July, 2016 passed by the learned Ad-hoc District Judge-2, Pune in Civil Appeal No.137 of 2007. By these orders, the

Courts below dismissed the suit instituted by the tenant, inter alia, praying for perpetual injunction restraining the respondent, Mr. Sumant Sharadchandra Ranade, hereinafter referred to as 'landlord' from causing obstruction to the premises admeasuring built up area of 329 square feet and open space admeasuring 571 square feet in all 900 square feet, more particularly described in paragraph 1 of the plaint. In the alternative, the tenant sought injunction restraining the landlord from causing obstruction to the premises which are given on monthly rent of Rs.10+5/- per month.

3. Writ Petition No.10968 of 2016 is instituted by the tenant challenging the judgment and decree dated 6th January, 2010 passed by the learned Additional Judge, Small Causes Court Pune in Civil Suit No.89 of 2002 as also the judgment and decree dated 5th July, 2016 passed by the learned Ad-hoc District Judge-2, Pune in Civil Appeal No.380 of 2010. By these orders, the Courts below decreed the suit instituted by the landlord for recovery of possession of one room admeasuring 126 square feet, more particularly described in paragraph 1 of the plaint (for short 'suit premises') on the ground contemplated under section 16 (1) (a) of the Maharashtra Rent Control Act 1999 (for short 'Act') r/w section 108 (o) of the Transfer of Property Act, 1882 (for short 'T.P. Act'). Since the parties in both the Petitions are common, and the controversy between the parties is identical, these Petitions can conveniently be disposed of by the common order.

4. In support of Writ Petition No.10950 of 2016 arising out of the suit instituted by the tenant is concerned, Mr. Jamdar submitted that the Courts below committed serious error in dismissing the suit. He submitted that the Courts below failed to appreciate that apart from the built up area of 329 square feet, open space admeasuring 529 square feet was let out to the tenant. The Courts below without properly appreciating the evidence on record held

that open space was not let out to the tenant. What is let out to the tenant was only one room. He has taken me through the impugned orders passed by the Courts below while dismissing the suit. As the tenant had established that in addition to letting out constructed area of 329 square feet open space admeasuring 529 square feet was let out to the tenant, the Courts below were not justified in dismissing the suit.

5. In support of Writ Petition No.10968 of 2016 arising out of the suit instituted by the landlord is concerned, Mr. Jamdar submitted that the Courts below decreed the suit under section 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act on the ground that the tenant had caused obstruction to the employees of the Corporation from cutting the trees. The landlord/agent is authorized to enter in the tenanted premises at all reasonable times during the term and inspect the condition thereof. Though the defendant is not tenant of the open space, he caused obstruction to the landlord from doing legal act that means he committed act which is destructive or permanently injurious to the landlord. Thus, tenant has committed breach of the terms of tenancy as contemplated under section 108 (o) of the T.P. Act.

6. Mr. Jamdar submitted that the Courts below refused to pass decree on the ground of nuisance and annoyance as contemplated under section 16 (1) (c) of the Act. While declining to pass decree under section 16 (1) (c) of the Act, the Courts below observed that as the landlord has sought possession of open space which is not rented premises, act of the tenant does not amount to nuisance and annoyance. Thus, the finding recorded by the Courts below while considering grounds under sections 16 (1) (a) and 16 (1) (c) of the Act are contradictory.

7. Mr. Jamdar has invited my attention to the description of the suit premises. In the suit filed by the tenant for perpetual injunction namely Civil Suit No.531 of 2001 and description of the suit premises in Suit No.89 of 2002 filed by the landlord. He has invited my attention to examination-in-chief of the landlord where he deposed that father of the tenant was serving as a servant with his predecessor in title and since he was in employment, father of tenant was allowed to reside in one room at the monthly rent of Rs.10/-. He also invited my attention to the cross-examination of the plaintiff where he admitted that tenant's brother Chandrakant is residing in the suit premises since beginning along with tenant, his father and mother. After the death of tenant's father and mother, tenant and his brother partitioned the suit premises in two parts and started residing separately. The landlord is issuing separate rent receipts to tenant and his brother. His predecessor was taking Rs.5/- from tenant and his brother.

8. Mr. Jamdar submitted that the Courts below committed serious error in holding that the tenant was not inducted in respect of open space and that he was tenant only in respect of one room admeasuring 126 square feet. He submitted that the tenant was a government servant and sometimes used to assist the landlord as a Gardner. He submitted that as the Courts below have committed serious error, impugned orders are liable to be set aside and the Petitions require consideration.

9. On the other hand, Mr. Patwardhan supported the impugned orders. He has invited my attention to the evidence of tenant's sister Sunanda Yashwant Dhamne in Civil Suit No.89 of 2002. In the cross-examination, she admitted that the suit premises admeasures 150 square feet. He invited my attention to paragraphs 18 and 19 of the cross-examination of the landlord's evidence. In paragraph 18, the landlord denied that the total built up area of

the suit premises is 302 square feet. In paragraph 19, he denied that two rooms are in possession of the tenant.

10. Mr. Patwardhan has also invited my attention to the evidence of the tenant in Civil Suit No.531 of 2001. In the cross-examination, he admitted that at the request of the landlord, his father used to do miscellaneous and gardening work. The Trust did not give written permission for construction of patra shed. He admitted that he has no documentary evidence to show that open space was let out by the trustees and the landlord. He submitted that the Courts below after appreciating the evidence on record, concurrently held that open space was not let out to the tenant. Despite this position, he made encroachment in the open space and thus, committed breach of the terms of tenancy. The Courts below were, therefore, justified in passing decree under section 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act. Mr. Patwardhan relied on the decision in **Patel Chandulal Trikamlal Vs. Rabri P. Harji, 1995 Supp (4) Supreme Court Cases 167** and in particular paragraphs 5 and 6 thereof.

11. Mr. Patwardhan submitted that the Courts below have decreed the suit only under section 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act. He can still support the decree of eviction by attacking the finding recorded by the Courts below on the ground under section 16 (1) (c) of the Act. He submitted that the Courts below declined to pass decree under section 16 (1) (c) of the Act only on the ground that open space was not let out to the tenant. Claim of eviction under section 16 (1) (c) of the Act is based upon the tenant committing encroachment in the open space which amounts to nuisance and annoyance. Since the open space is not rented premises, acts or omissions of the tenant do not amount to nuisance or annoyance. In view of decision of the Apex Court in the case **Patel Chandulal Trikamlal** (supra), he submitted

that the Courts below committed serious error in declining to pass decree under section 16 (1) (c) of the Act. He, therefore, submitted that the decree ought to be passed under section 16 (1) (c) of the Act.

12. In rejoinder, Mr. Jamdar distinguished the decision in **Patel Chandulal Trikamlal** (supra) on the ground that in paragraph 1 of that decision the term of tenancy was recorded which reads thus;

“I have measured the land. I will not use the land lying beyond the said limits. I will put up a wire fencing demarcating the demised land”.

which is not the present case here.

13. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as suit instituted by the tenant for perpetual injunction is concerned, after appreciating the evidence on record, the Courts below concurrently held that what was let out to the tenant was the constructed portion and not the open space. A perusal of evidence of Chandrakant, brother of the tenant shows that in the cross-examination, he admitted that open space was never let out to his father. Even sister of the tenant Sunanda Dhamane admitted in the cross-examination in Civil Suit No.89 of 2002 that area admeasuring 15'x10'square feet was let out to her father. The landlord in his suit also denied the suggestion that total built up area of the suit premises was 302 square feet. He denied the suggestion that two rooms are in possession of tenant. Thus, the Courts below, after appreciating the evidence on record have concurrently held that open space was not let out to the tenant. In view thereof, I do not find that the Courts below committed any error while dismissing the suit filed by the tenant. Therefore, Writ Petition No.10950 of 2016 fails and the same is dismissed.

14. This brings me to Writ Petition 10968 of 2016. Mr. Jamdar submitted that two independent rooms were let out to the tenant. One was occupied by the tenant and other was occupied by his brother Chandrakant. After Chandrakant left, the tenant started occupying both the rooms for which rent of Rs.5/- per month was charged. I have already upheld the finding recorded by the Courts below that open space was not let out to the tenant. In the eviction suit filed by the landlord, in paragraph 16 of the cross-examination, the landlord deposed that after the death of tenant's father and mother, tenant and his brother partitioned the suit premises in two parts and started residing separately. In paragraph 18, he denied the suggestion that total built up area of the suit premises is 320 square feet. In paragraph 19, he denied that two rooms are in possession of the tenant. In view thereof, I do not find any merit in the submission of Mr. Jamdar.

15. Mr. Jamdar submitted that while decreeing the suit under section 16 (1) (a) and declining to pass decree under section 16 (1) (c) of the Act, the Courts below rendered conflicting findings. Mr. Patwardhan submitted that the Courts below ought to have passed decree even under section 16 (1) (c) of the Act.

16. As mentioned earlier, the Courts below have concurrently found that open space was not let out to the tenant. Despite that, the tenant claimed tenancy rights and made encroachment in the open space. Act of the tenant in encroaching upon the open space which was not demised to him amounts to committing breach of the terms of tenancy as contemplated under section 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act. The Courts below were, therefore, justified in decreeing the suit under this provision.

17. A perusal of the finding recorded by the Courts below while considering the ground under section 16 (1) (c) is concerned, shows that the Courts below declined to pass decree on the ground that encroachment committed by the tenant was not in respect of the rented premises. In the case of **Patel Chandulal Trikamlal** (supra), suit was filed by the appellants on the ground that each of the tenants had committed breach of terms of tenancy. In paragraph 5, the Apex Court noted that there was no dispute that the tenants have encroached upon adjacent land of the landlord and are using it for the purpose of tethering their cattle.

18. In paragraph 6, the Apex Court has observed thus;

- “6. It is contended before us that the above term in the rent note cannot be considered as a term of the tenancy because it does not relate to the land in respect of which the tenancy was created. It relates to the adjoining land. Hence at the highest, it is a personal obligation cast on the tenant. We find it difficult to accept this contention. Clearly the tenancy of land was given for the purpose of;
- a. tethering cattle. The tenancy was of a portion of an open piece of land which belonged to the landlord. Looking to the nature of the use to which the open land was to be put by the tenants, it was provided in the rent note that the tenant will use only the portion of the open land which was given to him and will not use the open land lying beyond the limits of the land given to him on tenancy.
 - b. The clear intention of the parties was to ensure that the tenant only used the land demised to him and would not allow his cattle to stray beyond the demised land. For the same reason, it was also provided in the rent note that the tenant would fence the land. In this context, this is a condition which is imposed on the tenant as a condition of his tenancy. Looking to the purpose for which the tenancy was given, this is not just a personal obligation cast on the tenant not to trespass upon the adjacent land. The landlord out of his entire land, has given only.

- c. a portion of the land to the tenant on condition that he confines his cattle to the demised land and does not allow his cattle to trespass over the owner's land. Such a condition is not severable from the terms of the tenancy looking to the nature of the tenancy which was granted. It relates to the manner in which the demised land was to be used by the tenant. Both the fencing and the obligation not to go beyond the fencing or the demised land have to be read together.
- d. Hence the obligation contained in the rent note is not a personal obligation of the respondents. It is an obligation which has been cast on them in their capacity as tenants of an open piece of land which was given to them for tethering cattle. It is directly linked with the manner in which the demised land is to be enjoyed by the tenants and is an integral part of the rent note”.

19. As mentioned earlier, in the present case, after appreciating the evidence on record, the Courts below have concurrently found that open space was not let out to the tenant. The tenant not only encroached upon the open space but also obstructed representative of the landlord as also the employees of the Corporation who came for cutting trees. The Courts below noted that the landlord had obtained permission from the appropriate Authority for cutting trees. The Courts below, however, declined to pass decree under section 16 (1) (c) of the Act only on the ground that open space was not rented to the tenant.

20. The question is whether the landlord can attack the finding recorded by the Courts below while dealing with ground under section 16 (1) (c) of the Act without filing Cross Appeal or Cross Objection. In the case of **Banarsi and others Vs. Ram Phal (2003) 8 Supreme Court Cases 606**, the Apex Court referred to C.P.C amendment of 1976 and observed that insertion made in sub-rule-(1) makes it permissible to file cross objection against a finding. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour, however, if he proposes to attack

any part of the decree, he must take cross-objection. The amendment inserted by the 1976 is clarificatory and is also enabling. The Apex Court referred to three situations which are as under;

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.
- (ii) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.
- (iii) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

21. In paragraph 11, it was observed that in type of the case (i), it was necessary for the respondent to file an appeal or take cross-objection against the part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour, he is entitled to support without taking any cross-objection. In type of the cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue.

22. In the present case, the Courts below have passed eviction decree under section 16 (1) (a) of the Act and declined to pass decree under section

16 (1) (c) of the Act. The plaintiffs while supporting entire decree can also urge before this Court that the Courts below ought to have passed decree even under section 16 (1) (c) of the Act.

23. Applying the tests laid down by the Apex Court to the facts of the present case, the landlord can certainly attack the findings recorded by the Courts below while considering ground of eviction under section 16 (1) (c) of the Act without filing Appeal or Cross Objection. The Courts below declined to pass decree under section 16 (1) (c) only on the ground that the tenant had committed encroachment on the open space which was not let out to him. In view of the decision in **Patel Chandulal Trikamlal** (supra), the Courts below were not justified in declining to pass decree under section 16 (1) (c) of the Act. In the result, the landlord is entitled to decree of eviction under section 16 (1) (c) of the Act and the Courts below ought to have passed the decree under section 16 (1) (c) of the Act.

24. The tenant is not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. The tenant is not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising powers under Article 227 of the Constitution of India. No case is made out for interfering with the impugned orders. Hence, Petitions fail and the same are dismissed.

[R.G. KETKAR, J.]