

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2716/2019

Sunil G. Ramkrishna Kadu & anr.

..VS..

Arvind M. Deshmukh

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M. Ghare, Advocate for the petitioner(s)
Shri P.P. Kothari, Advocate for the respondent

CORAM : Z.A.HAQ, J.

DATED : 08/08/2019

Heard.

The respondent has filed civil suit against the petitioners under Section 15 and Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short “the Act of 1999”). The petitioners filed their written statement and opposed the claim of the respondent. The trial progressed. Issues came to be framed as follows:-

“1. Does plaintiff prove that defendant no. 1 is his tenant ?

2. Whether this Court has jurisdiction to entertain the suit ?

3. Does plaintiff prove that defendant is in arrears of rent ?

4. Whether plaintiff proves that he requires suit premises bonafidely and reasonably ?

5. To whom comparative hardship would be caused in case of passing of decree of eviction rather than refusing it ?”

The parties adduced evidence and cross-examined the witnesses of the other side. While delivering the judgment, the learned trial Judge answered Issue Nos. 1 and 2 in the negative recording that the plaintiff (present respondent) has failed to prove that the defendants (present petitioners) are his tenants and therefore the Small Cause Court had no jurisdiction to entertain the suit. Without adverting to the other issues, the learned trial Judge dismissed the suit in view of the findings recorded on Issue Nos. 1 and 2. The respondent had filed appeal under Section 26A of the Provincial Small Cause Courts Act read with Section 34 of the Act of 1999 before the District Court to challenge the judgment and decree passed by the trial Court. This appeal is decided by the impugned judgment.

The learned District Judge has reversed the findings recorded by the learned trial Judge on both the issues and has held that the plaintiff has proved that the defendants are tenants of the plaintiff and that the Small Cause Court has jurisdiction to entertain and decide the civil suit. After recording these findings, the learned District Judge has remitted the matter to the trial Court for delivering judgment on the other issues i.e. Issue Nos. 3 to 5. After remand, the learned trial Judge proceeded with the matter and on request of the plaintiff, permitted him to cross-examine two witnesses.

Learned advocate for the respondent – original plaintiff has submitted that the two witnesses examined by the plaintiff after remand have been cross-examined at the behest of the defendants and after recording of evidence was over, arguments were heard by the learned trial Judge and

the matter was closed for judgment and then at this stage, this petition is filed. It is submitted that the petition is liable to be dismissed because of the laches and conduct of the petitioner. Case details showing progress of the suit after remand have been placed on record by the respondent alongwith his submissions. The case details show that after remand, the trial Court had taken up the matter on 30/03/2017, on which date the parties were asked by the learned District Judge to appear before the trial Court, and then after the plaintiff examined the witnesses and amended the plaint, the matter was fixed for arguments on 24/01/2019, 28/01/2019, 02/02/2019, 25/02/2019, 13/03/2019, 18/03/2019, 19/03/2019 and 08/04/2019. This petition is filed on 29/03/2019. Pointing out the above facts, learned advocate for the respondent submitted that the petition is liable to be dismissed on the ground of delay and laches.

As far as the merits of the matter are concerned, according to the petitioners – original defendants, learned District Judge has committed an error in recording the finding that relationship of landlord and tenant existed between the plaintiff and defendants, overlooking the provisions of Section 55 of the Act of 1999. It is submitted that as admittedly there is no written agreement between the plaintiff and defendants regarding tenancy, the plaintiff cannot be permitted to adduce evidence to prove the relationship of landlord and tenant between the plaintiff and defendants. To support the submission, reliance is placed on the following judgments:-

(a) Judgment given in the case of Ramesh Ramrao Hate vs. Parvez B. Bhesania reported in 1997 (1) Mh.L.J. at page 295 and;

(b) Judgment given in the case of Sails India vs. Rita M. Rupani reported in 1997 (2) Mh.L.J. at page 269.

Learned advocate for the petitioners has argued that the appellate Court has transgressed its jurisdiction by re-appreciating the evidence and reversing the findings recorded by the learned trial Judge on Issue No. 1. It is submitted that the learned trial Judge had rightly appreciated the material on record, and relying on the fact that there was no written agreement of tenancy, and considering the document on record i.e. No Objection Certificate (Exh. 49/A) issued by the Co-operative Society for transfer of membership in the name of the defendant no. 2, had rightly accepted the claim of the defendants that the defendants were put in possession of the flat pursuant to the agreement of sale. It is argued that the findings recorded by the learned trial Judge on proper appreciation of evidence on record, could not have been reversed by the learned District Judge without recording how the findings recorded by the trial Court were perverse. To support the submission, reliance is placed on the judgment given by the Hon'ble Supreme Court in the case of Santosh Hazari vs. Purushottam Tiwari (Dead) by LR's. reported in AIR 2001 SC at page 965 and the judgment given by the learned Single Judge of this Court in Second Appeal No. 341/2003 (Mohammad Sadiq S/o Mohammad Harun (Dead) Thru LR's vs. Fahimuddin Inamdar S/o Mohd. Gulam Mohiddin & ors.) and connected appeal on 20/07/2017. It is

urged that the judgment passed by the District Judge be set aside, the judgment and decree passed by the trial Court on 28/04/2014 be restored and the civil suit filed by the plaintiff be dismissed.

The advocate for the respondent – plaintiff has supported the judgment passed by the learned District Judge. It is submitted that the argument based on Section 55 (1) and Section 55 (2) of the Act of 1999 is mis-directed and it cannot be said that if there is no agreement of tenancy in writing, the landlord cannot be permitted to adduce evidence to prove the relationship of landlord and tenant between the parties. It is submitted that sub-section (2) of Section 55 of the Act of 1999 only lays down that if the agreement of tenancy is not in writing, or if it is in writing but not registered, the contention of the tenant about the terms and conditions subject to which the premises were given to him by the landlord would prevail, and that too if the landlord fails to prove otherwise. It is further pointed out that as per sub-section (2) of Section 55 of the Act of 1999, creation of tenancy without written registered document results in penal consequences and the landlord can be convicted for contravention of the provisions of Section 55 (1) of the Act of 1999. In support of the submission, the advocate for the respondent has relied on the judgment given by the Single Judge at Aurangabad Bench of this Court in Civil Revision Application No. 07/2011 (Shashikant S/o Ramrao Kulkarni vs. Smt. Nirmala W/o Vasantrao Gore) on 19/04/2011 and the judgment given in the case of Smt. Janabai Govindrao Korche & anr. vs. Women's Education Society & Ors. reported in 2009 (5) ALL MR at page 926. It is argued that the learned District Judge has examined the evidence on record in the right perspective

and there is no scope for interference with the impugned judgment. It is prayed that the petition be dismissed with exemplary costs.

After examining the rival submissions, I find that the argument made on behalf of the petitioners, relying on Section 55 of the Act of 1999, is mis-directed. The provisions of Section 55 (1) of the Act of 1999 provides that if tenancy is created after commencement of the Act of 1999, it should be in writing and the document should be registered, and for violation of these requirements, the landlord can be convicted and punished with imprisonment. The advocate for the petitioners has not been able to point out any provision which lays down that for violation of any of the requirements of Section 55 (1) of the Act of 1999, the tenancy would be void and the landlord cannot claim that relationship of landlord and tenant exists/existed between the parties. The provisions of Section 55 (1) of the Act of 1999 cannot be interpreted in the manner as suggested by learned advocate for the petitioners / tenants. It would be nothing but extreme hardship on the landlord if he is prohibited from adducing evidence to prove the existence of landlord-tenant relationship between the parties.

After going through the impugned judgment, I find that the learned District Judge has rightly examined the controversy keeping in mind the above principle. The learned District Judge has summed up his conclusions in para no. 37 of the judgment as follows:-

“37) Thus to sum up, plaintiff holds title of the suit premises and the defendant is in possession thereof without having a title. Plaintiff pleaded and deposed on oath that he let his premises to the defendants on rent of Rs. 3000/- per month. Defendant took altogether different stands. But the defendant failed to prove his story. There is nothing on record to dis-believe plaintiff and therefore, plaintiff successfully proved that he let the premises to defendants on rent of Rs. 3000/- per month. As plaintiff proved landlord tenant relationship between himself and defendants, this Court has jurisdiction and therefore, I answer point Nos. 1&2 in the negative.”

In the facts of the case, I find that the judgments relied upon by learned advocate for the petitioners are not of any assistance to the petitioners, and none of the judgments lay down that if the requirements of Section 55 (1) of the Act of 1999 are not fulfilled, the landlord cannot be permitted to adduce evidence to prove the existence of landlord-tenant relationship created by an oral agreement.

I find that the learned District Judge has rightly given due weightage to the fact that the defendants have failed to prove that they were put in possession of the flat in December, 2005 pursuant to the alleged oral agreement of tenancy. In my view, the learned District Judge has not committed any error while passing the impugned judgment.

Hence, I see no reason to interfere with the impugned judgment in the extraordinary jurisdiction.

The writ petition is **dismissed** with costs quantified at Rs. 20,000/- to be paid by the petitioners to the respondent.

The petitioners shall deposit the amount of costs before the trial Court within three months failing which the trial Court may take appropriate steps against the petitioners considering it to be non-compliance of the directions given by this Court.

JUDGE

Ansari