

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4806 OF 1993

Rajaram Khondoji Gaikwad ..Petitioner
Vs.
Chagonabai Vishwanath Shinde & Ors. ..Respondents

Mr. Prathamesh B. Bhargude i/b. Mr. Sugandh B. Deshmukh & Mr.
A. V. Anturkar Senior Adv., for the Petitioner.
Mr. P. P. Kakade, for the Respondents.

**CORAM : C.V. BHADANG, J.
RESERVED ON : 8th FEBRUARY 2021
PRONOUNCED ON : 23rd FEBRUARY 2021**

P.C.

. The challenge in this petition is to the judgment and decree dated 5/10/1993 passed by the learned Additional District Judge at Pune in Civil Appeal No.15/1990. By the impugned judgment, the learned District Judge while dismissing the appeal filed by late Rajaram Gaikwad (original defendant) has confirmed the judgment and decree dated 21/10/1989 passed by the learned Small Causes Court at Pune, thereby directing eviction of late Rajaram Gaikwad, from the suit premises.

2. The brief facts necessary for the disposal of the petition may be stated thus-

That late Chagonabai Shinde (original plaintiff) filed Suit No.2151/1986 against Rajaram Gaikwad (since deceased) for eviction and possession on the ground of default in the matter of payment of rent, reasonable and bonafide requirement, nuisance and on the ground that the tenant had made permanent construction in the tenanted premises. The parties herein are the legal representatives of the original plaintiff and the defendant. For the sake of convenience, they are referred to in their original capacity as plaintiff and defendant.

3. The suit premises consist of one room admeasuring 7 x 16 feet on the ground floor standing on CTS No.1857, Sadashiv Peth, Pune, more particularly described in para 1 of the plaint.

4. The suit property originally belonged to one Vasant Pote and others. Plaintiff purchased the suit property Benami, in the name of her sister Harinabai on 23/6/1971 and subsequently, the property was recorded in the name of the plaintiff on 13/11/1979. The case made out in the plaint is that the defendant was occupying the suit premises as a tenant on monthly rent of Rs.10/- exclusive of taxes.

The tenancy was as per the English Calender month. It was the material case that the defendant had not paid the rent from 23/6/1971 either to the plaintiff or Harinabai and thus the defendant was in arrears of rent of Rs.755/- plus taxes and has become a willful defaulter. It was next contended that the family of the plaintiff consists of eight members and she was in possession of only two rooms which are insufficient. It was contended that the elder son of the plaintiff was married and her two daughters were also residing with her and the younger son was of a marriageable age. It was thus contended that the plaintiff reasonably and bonafide requires the suit premises for her occupation. It was contended that the defendant has acquired five blocks at Vadgaon Sheri and another premises at Kalewadi, Pimpri and was residing there. It was thus contended that the defendant was not in need of the suit premises. It was also contended that the defendant had constructed a bath room and attick of wooden material in the suit premises without prior permission of the plaintiff. It was also contended that the defendant used to keep water tap open and there were other acts attributed to him including of creating ruckus in a drunken condition which was a nuisance. On all such grounds, the eviction of the defendant was sought.

5. The defendant resisted the suit. It was denied that the plaintiff was the owner or “vahivatdar” of the suit property. The alleged purchase of the property by the plaintiff under a Benami transaction and the transfer of the suit property in the name of the plaintiff on 13/11/1979 were denied for want of knowledge. All other adverse allegations about the defendant being in arrears of rent or a defaulter etc. were denied. It was contended that the defendant was occupying the suit premises as a tenant over last 30 years and paying rent at the rate of Rs.6/- per month inclusive of all taxes and charges. It was contended that the defendant lost his wife and was aged and was not maintaining good relations with his sons and thus, had no other premises to occupy than the suit premises.

6. On the basis of the rival pleadings, the learned Trial Court framed in all nine issues including whether the plaintiff was entitled to possession, on the ground that the defendant had challenged the title of the plaintiff.

7. The plaintiff examined her daughter Shobhana while the defendant examined his son Sudam who is a Power of Attorney holder. The parties produced certain documents.

8. The learned Trial Court found that the plaintiff had established the case of the premises being reasonably and bonafide required by her for personal use and occupation and also on the ground that the defendant had challenged the title of the plaintiff. It was also found that it was the plaintiff who would suffer greater hardship if the eviction is not granted. All other grounds were found to be not proved. In view of the affirmative findings against Issue Nos.2, 3 and 6, the learned Trial Court by a judgment and decree dated 5/10/1993 decreed the suit.

9. Feeling aggrieved, the defendant challenged the same before the learned District Judge. The learned District Judge framed following points for determination.

- 1. Does the plaintiff prove her reasonable and bonafide requirement for the decree of possession of the suit premises ?*
- 2. Is there necessity to interfere in the order and decree passed by the Trial Court ?*
- 3. What order ?*

10. The learned District Judge answered the point No.1 in the affirmative and point No.2 in the negative and by the impugned judgment has dismissed the appeal. Hence, this petition.

11. I have heard Mr. Prathamesh Bhargude, the learned counsel for the petitioner and Mr. P. P. Kakade, the learned counsel for the respondents. The learned counsel for the petitioner has also placed written submissions on record. I have gone through the same and the record.

12. It is submitted by the learned counsel for the petitioner that on her own saying the plaintiff claims to have purchased the suit property *benami* in the name of her sister Harinabai Bhosale. It is therefore submitted that the suit would be barred by the provisions of Section 4 of the Prohibition of Benami Property Transactions Act, 1988 ('Act of 1988', for short). It is submitted that the subsequent mutation entry dated 13/11/1979 cannot confer any title on the plaintiff. It is submitted that the mutation entries are for fiscal purpose and would not confer any title. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Rajinder Singh Vs. State of Jammu and Kashmir and others (2008) 9 SCC 368**. It is next submitted that in the absence of any title, the plaintiff, as a landlord who is only a rent collector would not be entitled to seek eviction on the ground of personal occupation under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Rent Act', for short). For this purpose, the

learned counsel has placed reliance on Explanation (b) to Section 13(2) of the Rent Act. It is submitted that the expression landlord for the purposes of Section 13(1)(g) would not include a rent farmer or rent collector or a estate manager. Reliance in this regard is placed on the decision of this Court in **Kamruddin Masjid Trust by its Mutawali Trustee Shaikh Bashir Ismail Vs. Abdul Rahiman Fakiruddin 1986 (2) Bom.C.R. 121**. It is submitted that even otherwise the ground of bonafide personal occupation is not established on facts.

13. Lastly, it is submitted that the ground of denial of title also does not subsist in view of the fact that the original plaintiff had herself claimed purchase of the suit property benami in the name of her sister. It is submitted that the decision in the case of **Sankara Hali & Sankara Institute of Philosophy and Culture Vs. Kishorilal Goenka and Anr. (1996) 7 SCC 55** is distinguishable on facts.

14. The learned counsel for the respondent has supported the impugned judgment. It is submitted that a three Judge Bench of the Supreme Court in the case of **R. Rajgopal Reddy (Dead) by LRs. & Ors. Vs. Padmini Chandrasekharan (Dead) by LRs. (1995) 2 SCC 630** has held that the provisions of Section 4(1) of the Act of 1988

are not retrospective in operation. It is thus submitted that the reliance on the provisions of the said Act, is misplaced inasmuch as the transaction in this case is dated 23/6/1971 and even the suit was filed on 22/12/1986 i.e. prior to the coming into force of the Act of 1988. It is submitted that the ground of bonafide personal need has rightly been upheld as also the ground of denial of title.

15. I have carefully considered the rival circumstances and the submissions made. At the outset, it is necessary to note that the eviction has been ordered only on the basis of the twin grounds i.e. of suit premises being required by the plaintiff for her bonafide personal use and occupation i.e. under Section 13(1)(g) of the Rent Act and on the ground that the defendant had denied the title of the plaintiff. All other grounds have been negated. Thus, the consideration is confined only to these two grounds.

16. Coming to the 1988 Act, it is evident that the Supreme Court in the case of **Rajgopal Reddy** (supra) has held that the provisions of the said Act are not retrospective in operation. Thus, the said Act cannot have any bearing. Section 1(3) of the said Act would indicate that the provisions of Section 3, 5 and 8 came into force at once while the remaining provisions (which would include Section

4) shall be deemed to have come into force on 19/7/1988. It can thus be seen that the Act would not affect the transaction dated 23/6/1971.

17. The record discloses that there is a contemporary agreement (Exh.38) executed on the same day i.e. on 23/6/1971 (Exh.37) on which date the sale deed was executed in favour of the sister of the plaintiff. Then there are the entries in the property card (Exh.33 and 40). Having regard to the fact that the act has been held to be not retrospective in operation, the contention on behalf of the petitioner cannot be accepted.

18. Coming to the ground based on the Explanation 'b' to Sub-section 2 of Section 13 of the Rent Act, it is true that as per the explanation the expression 'landlord', for the purpose of the eviction sought under Section 13(1)(g) of the said Act would not include a rent collector. However, once it is held that the plaintiff was owner having acquired title as per the sale deed dated 23/6/1971 and the agreement Exh.38, the contention based on the said explanation also cannot be accepted.

19. Coming to the ground of reasonable and bonafide personal occupation, both the Courts on the basis of the oral evidence have concurrently held the said ground to be proved and I do not find that there is any infirmity in the said finding. It has come on record that at the relevant time the plaintiff was in possession of two rooms admeasuring 9 x 7 ft and 16 x 10 ft each, which included a sanitary block. At the relevant time, there were eight members in the family of plaintiff including two couples. The elder son of the plaintiff was married. Another was of marriageable age and there was an unmarried daughter. It is trite that the landlord is the best judge of his requirement and even otherwise on facts the need of the landlord has rightly been held to be reasonable and bonafide. Quite to the contrary, it has come on record that the defendant was living at Pimpri with his third son Nandkishore. The elder son Vilas was living at Vadgaon Sheri at his own house of four blocks. Second son Chandrakant was staying in rented premises at Hadapsar. It has come on record that Sudam the fourth son of defendant was only residing in the suit premises alongwith his wife and two daughters. Thus, on a consideration of comparative hardship, the Courts have come to the conclusion and rightly so that it is the plaintiff who would suffer greater hardship in the event eviction decree is refused.

20. Lastly, coming to the ground of denial of title. As already held and in view of the fact that the contention based on the Act of 1988 has been negatived, the plaintiff was the owner and the landlord.

21. It is true that the revenue entries are for fiscal purposes and cannot confer title. However, in the present case, the plaintiff is claiming title on the basis of sale deed dated 23/6/1971 which albeit according to her is executed benami in the name of her sister as an ostensible owner. Once it is held that the said transaction is not hit by the provisions of the Act of 1988, the claim of the plaintiff is not merely based on the mutation entries taken on 13/11/1979. Thus, the decision in the case of **Rajinder Singh** (supra) cannot come to the aid of the petitioner in this case.

22. It is necessary to note that the defendant within one month of the receipt of the notice dated 14/3/1986 had filed MA No.254/1986 for fixation of standard rate against the respondent (plaintiff). It can thus be seen that on or about the filing of the suit itself the defendant by filing the said proceedings had accepted the plaintiff as a landlord for all practical purposes. The subsequent denial of the title therefore would result into the forfeiture of the tenancy under Section 111(g)(2) of the Transfer of Property Act,

1882. The finding so recorded, in my considered view, does not suffer from any infirmity.

23. I have gone through the impugned judgment and decree passed by the Courts below and I do not find that it suffers from any infirmity so as to require interference in the supervisory jurisdiction under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.