

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 909 OF 2022

Mr. Neelesh Madhavdas Shah and Ors ... Appellants

Vs.

Smt. Chandramaniben Jeevandas Shah and ... Respondents
Ors.

Mr. Bhushan Walimbe a/w. Mayank i/b. Priyal G. Sarda, for Appellants.

Mr. Vijay Killedar for Respondent.

CORAM: GAURI GODSE, J.

CLOSED FOR ORDER ON: 16th JULY 2024

PRONOUNCED ON : 27th AUGUST 2024

ORDER:

1. This second appeal is preferred by the original defendants nos. 1 to 3 (“appellants”) to challenge the concurrent judgments and decrees declaring the plaintiff as a sole and exclusive owner of the suit property and directing the appellants to hand over possession of the suit property to the plaintiff. There is also a declaration granted that the probate obtained in the Probate Proceeding No. 169 of 1995 is not binding upon the plaintiff to the extent of the suit property.

2. Learned counsel for the appellants submitted that the suit property originally belonged to one Manmohandas, who died leaving behind his three sons, Haridas, Jeevandas and Madhavdas. He submitted that Jeevandas died issueless in the year 1979, leaving behind his wife, i.e. plaintiff as his sole heir. He submitted that Madhavdas expired in the year 1994, leaving his wife, i.e. defendant no.2, his son, defendant no.1 and his daughter, defendant no.3 as his heirs. He submitted that the third son, Haridas, died in the year 1982, leaving behind defendant No. 4 as his sole heir. Learned counsel for the appellants further submitted that there was a partition of the joint family property, and the suit property was allotted to the share of the plaintiff's husband, i.e. Jeevandas. However, the plaintiff started residing with her relatives in Hyderabad after Jeevandas expired in the year 1979. He submitted that the suit property was given to Haridas, i.e. predecessor in the title of defendant no.4, on a monthly tenancy basis. Accordingly, Haridas used to send the rent amount to the plaintiff at Hyderabad.

3. Learned counsel for the appellants submitted that it was the plaintiff's case that the suit property consisting of the shop was closed in the year 1992, and hence, possession was delivered to the plaintiff, and the suit property was kept locked as she was residing at Hyderabad. Learned counsel for the appellants

submitted that the plaintiff further pleaded that in the month of December 1996, the plaintiff's relative came across public notice pertaining to the suit property, and hence, she filed a suit on the apprehension that the defendants were indulged in making some transaction in respect of the suit property. Learned counsel for the appellants submitted that the appellants filed their written statement and admitted that the suit property was with Haridas in the capacity of tenant and that he was paying rent. They further contended that the deceased Haridas had assigned his tenancy rights to defendants nos. 5 and 6 by executing a Will. Thus, the appellants' case was that, in view of the probate, the tenancy rights in the suit property were transferred to defendants nos. 5 and 6.

4. Learned counsel for the appellants further submitted that in view of the issue regarding inducting Haridas as a tenant in the suit property, the Civil Court had no jurisdiction to entertain the suit. He submitted that the findings recorded by the Trial Court on issue no. 1 regarding tenancy rights of defendant nos. 1 to 3 is, thus, without jurisdiction. He further submitted that even the First Appellate Court failed to take into consideration that in view of the issue regarding inducting Haridas into the suit property, the Civil Court would not get jurisdiction to decide the suit. He thus submitted that the issue with

regard to the Civil Court's jurisdiction is the question of law required to be decided in the Second Appeal.

5. In support of his submissions, the learned counsel for the appellants relied upon the decision of this Court in the case of *Dhondi Tukaram Mali Vs Hari Dadu Mang*¹. Learned counsel for the appellants, by relying upon the said decision submitted that this court has taken a view that if a plea is raised by the defendant in the suit that he is a tenant or protected tenant under the Maharashtra Tenancy and Agricultural Lands Act 1948 ("Tenancy Act"), that plea is ultimately referable to the provisions of the Tenancy Act and the purpose of raising the plea is to claim the protection of tenancy. Therefore, in the suit filed against the defendant on the ground that he is a trespasser, if a plea that he is a tenant or protected tenant is raised, the Civil Court would have no jurisdiction to deal with that plea. Thus, learned counsel for the appellants, by relying upon the said decision, submitted that even in the present case, the civil court would get no jurisdiction in view of the issue regarding the tenancy of Haridas under the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 ("Rent Act") and the assignment of the tenancy in favour of defendants nos. 5 and 6 and thereafter in favour of the appellants.

1 AIR 1952 (Bom) 969.

6. I have considered the submissions made by the learned counsel for the appellants. A perusal of both the impugned judgments indicates that the courts have answered the point of jurisdiction by holding that the Civil Court has jurisdiction to entertain the suit. The relationship between the parties is not in dispute. It is also not in dispute that after the death of the original holder, i.e. Manmohandas, there was partition amongst his sons, and the suit property was allotted to the share of the plaintiff's husband. Hence, admittedly, Jeevandas was the owner of the suit property, and after his death, the plaintiff became the sole owner of the suit property.

7. The plaintiff's case appears to be that the suit property was initially given to Haridas on monthly tenancy. The plaintiff further pleaded that the shop was closed in 1992, and the possession had been delivered to the plaintiff. Defendant no.4, i.e. sole heir of Haridas, filed his written statement and admitted that the suit property was given to the share of the plaintiff's husband in partition. Defendant no. 4 admitted that Haridas was occupying the suit property and he was paying rent. However, defendant no.4 had shown ignorance of the plaintiff's plea that Haridas had delivered the possession to the plaintiff. It is defendant no. 4's plea that Haridas had assigned his tenancy rights to defendants nos. 5 and 6 by way of a Will and that the said Will was probated; hence, in view

of the probate, defendant nos. 5 and 6 were tenants of the plaintiff in respect of the suit property.

8. Defendants nos. 5 and 6 failed to appear in the suit, though served. Hence, the suit proceeded ex-parte against them. So far as the present appellants are concerned, they are heirs and legal representatives of the third brother, i.e. Madhavdas. In the written statement, the appellants admitted that the suit property was given to Haridas on rent. However, they denied that Haridas had delivered possession of the suit property to the plaintiff. Appellants pleaded that Jeevandas, i.e., the plaintiff's husband and his two brothers, Haridas and Madhavdas, were carrying business together. It was their case that after Haridas, Madhavdas started carrying business, and after his death, his sons, i.e. appellants, started carrying on the business in the suit shop. Appellants further contend that after Haridas, Madhavdas started paying rent to the plaintiff and that Madhavdas has also spent the amount on repairs and maintenance of the suit shop. Thus, the appellants claimed their tenancy rights in the suit shop. Therefore, it was their contention that they, being in possession of the suit property as tenants, the Civil Court would not get jurisdiction to decide the suit.

9. It is pertinent to note that, admittedly, only Haridas was inducted as a tenant. The sole heir and legal representative of

Haridas, i.e defendant no.4, shows ignorance on the plaintiff's case that Haridas handed over back the possession to the plaintiff. As per defendant no.4, in view of the Will executed by Haridas, tenancy rights were assigned to defendant nos. 5 and 6. However, the suit proceeded ex-parte against defendant nos. 5 and 6. Thus, in view of the aforesaid facts, both the courts held that the appellants failed to prove that they were in possession of the suit property as tenants. Both the courts referred to the plaintiff's contention regarding inducting Haridas as a tenant. Both the courts further held that the burden of proving the claim of tenancy rights was on the appellants. However, it was not their case that they were joint tenants with Haridas. Thus, on examination of the pleadings and evidence on record, both the courts refused to accept the appellants' contentions that they were in possession of the suit property as tenants. Hence, both the courts held that the Civil Court had jurisdiction over the suit.

10. The suit is filed for possession based on title. The plaintiff's title is not in dispute. The Civil Court, therefore, has inherent jurisdiction over the suit. There is no ouster of the Civil Court to decide whether the defendant is occupying the property as a tenant or not. In the provisions of the Rent Act as well as the Maharashtra Rent Control Act 1999, there is no ouster of the Civil Court's jurisdiction. The decision in the case of *Dhondi Mali*, relied upon by

the learned counsel for the appellants, would have no bearing on the facts of the present case. Under the Tenancy Act, the issue with regard to the tenancy is expressly ousted in view of Section 70, read with Section 85 of the Tenancy Act. In view of Section 85, the civil court's jurisdiction is ousted to settle, decide or deal with the questions that are to be settled, decided or dealt with by the Mamlatdar or the Tribunal under the provisions of the Tenancy Act. Thus, unlike the provisions of ouster under Section 85 of the Tenancy Act, there is no exclusion of the Civil Court's jurisdiction provided under the Rent Act. In the decision of *Dhondi Mali*, the Hon'ble Division bench of this court held that if any question mentioned in Section 70 of the Tenancy Act arises between the parties, it will have to be decided by the Mamlatdar. Therefore, it is held in the said decision that, in a suit filed on the footing that the defendant is a trespasser, if he raises a plea that he is a tenant or a protected tenant, the civil court would have no jurisdiction to deal with that plea. It is further held that in such cases, the proper procedure would be to direct the party raising such a plea to obtain a decision from the Mamlatdar within a reasonable time.

11. It is also necessary to refer to Section 85A of the Tenancy Act, which provides for the Civil Court to refer to the Competent Authority to decide any issue arising in a civil suit that is required to

be settled, decided, or dealt with under the Tenancy Act. Subsection (2) of Section 85A of the Tenancy Act says that such issue shall be dealt with and decided by the Competent Authority in accordance with the provisions of the Tenancy Act, and its decision be communicated to the Civil Court, and such Civil Court shall thereupon dispose of the suit. So, even as per the provisions of the Tenancy Act, the civil court's jurisdiction that is ousted is only the jurisdiction to decide the issues that are to be dealt with and decided under the Tenancy Act. Thus, the legal principles settled in the decision of *Dhondi Mali* are not applicable to the present case.

12. The Apex Court interprets the issue with regard to Section 28 of the Rent Act in the decision of *Natraj Studio Vs Navrang Studios*².

The Apex Court held in paragraph 18 as under:

“18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean

2 (1981) 1SCC 523

*exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the court where the jurisdictional question falls to be decided, and the question may fall for decision before the court of exclusive jurisdiction or before the court of ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant for possession of a building on grounds specified in the Rent Act. Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary civil court instead of the Court of Small Causes the plaint will have to be returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary civil court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. **The defendant's plea will not straight away oust the jurisdiction of the ordinary civil court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the court where it falls for determination — be it the Court of Small Causes or the ordinary civil court. If the jurisdictional question is decided in favour of the court of exclusive jurisdiction the suit or proceeding before the ordinary civil court must cease to the extent its jurisdiction is ousted.***

emphasis applied

13. Thus, in the present case, the jurisdiction of the civil court is not ousted only because the defendants have raised the plea of tenancy under the Rent Act. On the examination of the pleadings and evidence on record, both the courts held that the appellants failed to prove that they were in possession of the suit property in the capacity of tenants. Thus, both the courts held that the civil court's jurisdiction is not barred. Therefore, in view of the legal principles settled by the Apex Court in the case of ***Natraj Studios***, the grounds argued on behalf of the appellants require no consideration by this Court.

14. The second Appeal does not raise any other substantial question of law. Hence, the Second Appeal is dismissed. In view of the dismissal of the second appeal pending Interim Application No. 30729 of 2022, is disposed of as infructuous.

(GAURI GODSE, J.)