

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

FIRST APPEAL NO. 1071 OF 1992

Vithoba Krishna Baad
since deceased through heirs
1(a) Smt. Samabai Vithoba Baad,
Age 68 yrs, Occ : Household

1(b) Sou. Usha Arun Khandekar
Age 43, Occ: Household

1(c) Shri Shailendra Vithoba Baad
Age 38 years, Occ: Service
All res. At Sion Koliwada,
Pratiksha Nagar, Bldg. No.T/41
Room No.209, Shiv Garjana,
Sion, Mumbai 400 022

..Appellant
(Original Defendant No.3)

v/s.

1. Rangnath Krishna Baad
2. The Bombay Housing & Area
Development Board.
3. The State of Maharashtra .

..Respondents

(Respondent No.1 org. Plaintiff
Resp. Nos.2 and 3 Org. Def. Nos.2 and 1)

Mr. Rajesh Parab for the Appellant.
Mr. Hamid Kadiani a/w. Ms. Kavisha Shah, Mr. Hrutvik Patil Mr. Nikhat
Chaudhary, Adv. Hamza Lakhani, Adv. Minal Pawar i/b. India Law
Alliance for the Respondent No.1.
Ms. Tanaya Goswami, AGP for the State.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 12th JANUARY, 2024.**

**PRASANNA
PRADEEP
SALGAONKAR**

JUDGMENT

1. By this appeal under Section 96 of the Civil Procedure Code, the

Digitally signed by
PRASANNA PRADEEP
SALGAONKAR

Date: 2024.01.18
09:57:51 +0530

appellant has raised challenge to the judgment dated 14.01.1992 in L.C.Suit No.2500 of 1986. By the impugned judgment and decree, the learned Judge, City Civil Court, Bombay decreed the suit filed by respondent No.1-plaintiff and directed respondent no.2 to hand over possession of the room no.302, 3rd floor, Siddharth Building, to the plaintiff by way of permanent alternative accommodation in lieu of room no.3 in Parmanandwadi Chawl, Parel, Bombay.

2. Respondent no.1 was the plaintiff and the appellant herein was defendant no.3 in the suit and shall be hereinafter referred to as the plaintiff and defendant no.3 respectively. Appellant nos.1(a), 1(b) and 1(c) are the legal representatives of defendant no.3, who died during the pendency of the appeal. Respondent no.3-State was defendant no.1 and respondent no.2-Bombay Housing and Area Development Board was the original defendant no.2 and shall be hereinafter referred to as defendant no.1-State and defendant no.2-Board respectively.

3. The dispute is in respect of room no.3 in Parmanandwadi Chawl No.12, situated at G.D.Ambekar Marg, Parel, Mumbai. The said room shall be hereinafter referred to as the suit room.

4. The Parmanandwadi Chawl was acquired by defendant no.1-State for redevelopment. All the occupants/tenants were called upon to vacate

the premises. They were allotted alternative temporary accommodation pending re-construction of the building. The notice under Section 22(1) (b) in respect of the suit room was served on defendant no.3, the elder brother of the plaintiff, and he was later allotted alternative temporary accommodation. Aggrieved by the allotment of the temporary alternative accommodation and apprehending allotment of the permanent alternative accommodation in favour of defendant no.3, the plaintiff filed a suit for declaration that he is entitled to the permanent alternative accommodation in the reconstructed building in lieu of the suit room.

5. The case of the plaintiff in brief is that, the suit room was initially in possession of Ganu Rama, as a tenant thereof. Sometime in the year 1947-48, Krishna Baad, the father of the plaintiff and defendant no.3 acquired possession of the suit room from Ganu Rama and started occupying the said room along with his wife and sons, i.e. the plaintiff and defendant no.3. Krishna Baad retired in the year 1969 and he along with his wife settled down in his native place after his retirement. The plaintiff claims that since then he was in exclusive possession of the suit room. It is the case of the plaintiff that defendant no.3 had acquired room no.16 in the same chawl and he was residing in the said room along with his family.

6. The plaintiff claims that he was on duty when defendant no.2-

Board took inventory of the occupiers of the chawl. The defendant who was present at the time of the inventory accepted the notice under Section 22(1)(b), which was issued in the name of the plaintiff, and obtained temporary accommodation by misrepresenting the staff of defendant no.2 Board that he was in occupation of the suit premises.

7. The plaintiff had initially filed Civil Suit No.3046 of 1077 in the Court of Small Causes, Mumbai, seeking to restrain the defendants from dispossessing him from the suit room and further from granting any temporary accommodation to defendant no.3 in lieu of the suit room. The defendants raised the issue of jurisdiction, leading to the plaintiff withdrawing the previous suit with liberty to file a fresh suit and accordingly filed the fresh suit before the City Civil Court at Bombay seeking declaratory relief as stated above.

8. Defendant No.2-Board claimed that the suit was not maintainable for want of statutory notice. Defendant no.2 further claimed that Parmanandwadi Chawl was owned by Parmanand Karsandas and the list of the tenants supplied by him did not include the name of the plaintiff. Defendant no.2 claimed that the notice under Section 22(1)(b) was not issued in the name of the plaintiff since he was neither a tenant nor in possession of the suit room. Defendant no.2 claimed that the notice in respect of room no.16, which was to be issued in the name of

Chandrakant Parab, was erroneously issued in the name of defendant no.3. The said error was later rectified and the notice in respect of room no.16 was issued in the name of Chandrakant Parab.

9. Defendant no.3 claimed that he had been residing in the suit room as a tenant since about 38 years prior to filing of the suit, and that he had vacated the suit room only on receipt of the notice under Section 22(1) (b). He has averred that the plaintiff illegally and unauthorizedly occupied the suit room after he had vacated the suit room and shifted to the temporary alternative accommodation in the transit camp. Defendant no.3 denied that the plaintiff was in possession of the suit room and claimed that the plaintiff used to come to the suit room only to have meals and hence his name was entered in the ration card. The plaintiff subsequently started consuming alcohol and started harassing his family members as well as the neighbors, which led to lodging of a police complaint against him. The plaintiff was arrested and after his release, he went back to his native place. On his return to Mumbai, he got himself a different premises elsewhere. Hence his name was deleted from the ration card. The defendant claimed that he has been paying the rent as well as all other charges in respect of the suit room. The defendants raised a plea of limitation and asserted that the plaintiff has no right to the suit room.

10. Based on the aforesaid pleadings, the trial court framed total 11 issues. Upon considering the evidence on record, the trial court rejected the plea that the suit was not maintainable for want of statutory notice and that the suit is barred by the law of limitation. On merits, the learned Judge held that the plaintiff had proved that he and his family members were in exclusive, continuous and uninterrupted possession of the suit room since 1970 till 20.01.1988 and that the defendant with his family was living separately in Room No.16. The learned Judge further held that since the plaintiff was in exclusive possession of the suit room as on the date of the acquisition of the building, he was entitled to the temporary alternative accommodation as well as the permanent alternative accommodation in the reconstructed building in lieu of the suit room. Based on these findings, the learned Judge decreed the suit in terms of prayer clause (a) and thereby directed defendant No.2-Board to allot Room No.302 on the third floor of Siddharth Building to the plaintiff. Being aggrieved by this order, the defendant has filed this appeal.

11. The learned Counsel for defendant no.3 submits that the suit for declaration is not maintainable in the absence of challenge to the notice under Section 22(1)(b) as well as for want of prayer seeking direction to defendant No.2 to allot permanent alternative accommodation. The learned Counsel for the defendant has raised the issue of limitation on the premise that the cause of action had accrued on the date of issuance of

notice to vacate the suit room. The learned Counsel for defendant no.3 contends that though the relief is couched as a declaratory relief, the challenge in essence is to the order passed by defendant No.2 and hence in terms of Article 100 of the Limitation Act, the period of limitation to alter or set aside any decision or order of the Court is one year from the date of the order.

12. The learned Counsel for defendant no.3 submits that the evidence indicates that the plaintiff and the defendant no.3 were in joint possession of the suit room till the year 1969. The plaintiff had failed to establish that he was in exclusive possession of the suit room from 1972 to 1976. The plaintiff has also failed to plead and prove the circumstances under which defendant no.3 left the suit room. He submits that the trial court could not have taken into consideration possession of the plaintiff post notice dated 13.04.1976 under Section 22(1)(b). He submits that the trial court has failed to appreciate the evidence adduced by defendant no.3, which amply proves the circumstances under which the plaintiff left the suit room. He submits that defendant no.3 has been put in possession of the permanent alternative accommodation and that the plaintiff is not entitled for any declaratory relief.

13. The learned Counsel for the plaintiff submits that the names of the plaintiff, his son and son-in-law were recorded in the ration card in

respect of the suit room. Though the name of the plaintiff was deleted in the year 1973, the other two names continued to remain on the ration card till 1975. Furthermore, the evidence adduced by the plaintiff proves that his wife was residing in the suit room at the time of the birth of his two daughters in the years 1970 and 1973. The learned Counsel submits that documentary as well as the oral evidence adduced by the plaintiff amply proves that plaintiff was in possession of the suit room. He submits that the case set up by defendant no.3 is inconsistent. Though defendant no.3 had claimed that the plaintiff was not residing in the suit premises, he has admitted either expressly or inadvertently that he was residing in the suit room till the year 1973. He further submits that the defendant has failed to prove that the plaintiff was forced to leave the suit room in the year 1973 because of his misbehaviour. The learned Counsel for the plaintiff submits that the letter dated 25.08.1976 addressed by defendant no.3 to the Deputy Chief of defendant No.2 -Board proves that he was in possession of room No.16. The learned Counsel for the plaintiff therefore contends that the judgment and decree is based on the evidence on record and does not warrant any interference.

14. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The plaintiff claims that he was in exclusive possession of the suit room since 1970 and has sought a declaratory relief that he is entitled for permanent

alternative accommodation in lieu of the suit room. In the circumstances, the questions for consideration are (i) whether the suit is barred by law of limitation, and (ii) whether the plaintiff had proved that he was in exclusive possession of the suit room since the year 1970.

15. Defendant no.3 has raised a plea of limitation on the ground that the plaintiff had challenged 'the order', which would attract Article 100 of the Limitation Act. It is suffice to say that under Section 22(1)(b) of the old Act, i.e. The Bombay Building Repairs and Reconstruction Board Act, 1969, the Board had the power to cause any building proposed to be structurally repaired, or reconstructed, or demolished to be vacated, if so considered necessary, within a specified period. The notice dated 13.04.1976 (Exh. 4), issued under Section 22 (1)(b) of the 1969 Act, cannot be construed as an order. Moreover, any relief relating to the vacation notice under Section 22(1)(b) is only an ancillary or consequential relief. The substantial relief sought by the plaintiff is a declaratory relief, the limitation for which is three years. The suit having been filed within the period of three years, the findings recorded on the issue of limitation do not warrant any interference.

16. Now coming to the next question, the plaintiff as well as defendant no.3 are claiming right to alternative premises on the ground that they were in exclusive possession of the suit room. It is therefore essential to

refer to the evidence adduced by each of them. PW.1-Rangnath Baad, has deposed that his father had taken the suit room on rent from Ganuram in the year 1947, and since then, he was residing in the suit room along with his family. PW1 has deposed that he had studied in the Municipal School at Ambekar Road and produced School Leaving Certificate at Exhibit B. He has further deposed that he was employed as a driver in the BEST Undertaking and his residential address in the service record is Room no.3, Chawl No.12. He has produced the driving license at Exhibit E, as well as an official gazette (Exhibit G) correcting his name in the driving license.

17. PW1 has deposed that his father retired in the year 1969, and thereafter his parents settled in their native place. In the same year, his brother, i.e. defendant no.3, acquired room no.16 in chawl no.12 and started residing in the said room along with his family. PW1 claims that he continued to occupy the suit room and that he and his family were in exclusive possession of the suit room till the date he vacated the suit room in view of notice dated 13.4.1976. He has produced electricity bills for the year 1974-75 (Exhibit C Colly.) and the rent receipts from 1963 to 1975 (Exhibit I Colly.) He has also produced the electoral roll of the year 1983 and letters received by him at the address of the suit room (Exhibit J Colly).

18. PW1 has deposed that initially the ration card was in the name of his father and that his name, as well as the name of his mother and brother, i.e. defendant no.3, were also recorded in the ration card. He claims that after the issuance of the notification, defendant no.3 told him to have a separate ration card and hence in the year 1976, he obtained a separate ration card in his name. He has produced the said ration card (Exhibit D). He has deposed that he occupied the suit room continuously from the year 1947 till 21.4.1988, when he shifted to the temporary accommodation allotted to him by defendant no.2-Board pursuant to the order of the Court.

19. PW1 claims that on 13.4.1976 when the officials of defendant no.2 had visited the suit room to serve notice under Section 22(1)(b), he was at his workplace, and taking undue advantage of the situation, defendant no.3 accepted the said notice and claimed right to the alternative transit accommodation in respect of said room. PW1 has deposed that room no.16 was in the name of defendant no.3 and that the notice in respect of the said room was also issued in his name and he was offered the temporary accommodation in the transit camp in lieu of the said room. PW1 claims that defendant no.3 sold the said room to Sadashiv Parab and occupied transit accommodation in lieu of the suit room. PW1 has deposed that the old chawl has been reconstructed and that he is entitled to a permanent accommodation in the reconstructed building in lieu of the

suit room.

20. PW2-Pandit Joshi, Assistant Personal Officer, in BEST Undertaking, has confirmed that the plaintiff was employed as a driver in BEST Undertaking. He has confirmed the contents of certificate dated 26.4.1977 (Exhibit K), certifying that as per the address furnished in the service record, the plaintiff was residing in room no.3, i.e. the suit room.

21. PW3 Dinanath Ubhalkar, is the Secretary of Parmanandwadi Kruti Samiti formed in June or July 1977. He has deposed that the Kruti Samiti has collected contribution/subscription from the occupants of the chawl. He claims that the plaintiff has paid contribution to the Kruti Samiti as per receipts (Exhibit L colly.) PW3 is also a resident of Parmanandwadi. He has deposed that he knows the plaintiff since his childhood, and claims that the plaintiff has been residing in the suit room since his childhood.

22. The evidence adduced by defendant No.3, DW1-Vithoba Baad indicates that he and the plaintiff were residing in the suit room along with their parents till the year 1969. After the retirement of his father, his parents settled in their native place. DW1 has deposed that the plaintiff had accompanied his parents to their native place whereas he continued to reside in the suit room with his family. The plaintiff returned to

Mumbai about a month and half later and requested him to allow him to reside in the suit room. Accordingly, he allowed the plaintiff to stay with him and to have meals. He claims that in the year 1973, the plaintiff assaulted his wife. A complaint was lodged against the plaintiff, pursuant to which he came to be arrested. On the next day, after his release from the police custody, the plaintiff returned to the suit room, but he did not allow him to stay in the room. The plaintiff thereafter collected his belongings and left the suit room. He states that the plaintiff never resided in the suit room after the incident of the year 1973.

23. DW1 has deposed that he was working in Neehanite Foundary at Wadala since about 31 years prior to the suit and the address in the service record and bank account with Abhudaya Co-operative Bank, is that of the suit room. He has also produced letters and other correspondence received by him at the address of the suit premises (Exhibit 5 Colly.) He has further stated that he has paid a monthly contribution to Parmanandwadi Nagrik Committee, and has produced receipts (Exhibit 6 colly.) He has produced the electrol roll as well as the ration card to prove that he was residing in the suit room.

24. DW1 had deposed that he received notice dated 13.4.1976 (Exh.4) issued by defendant no.2-Board to vacate the premises. He vacated the premises in the year 1977 and shifted to the transit accommodation

allotted by defendant no.2-Board. He has stated that he had paid rent as well as deposit of Rs.100/- to defendant no.2-Board in respect of the transit accommodation. He has produced the rent receipts and deposit receipt (Exhibit 2A Colly. and Exhibit 3) of the rent paid to defendant no.2 in respect of the said premises.

25. DW1 states that the notice in respect of room no16 was issued in his name though the said room was occupied by Chandrakant Parab. He has deposed that said Chandrakant Parab made an application to defendant no.2-Board to issue the notice in his name and accordingly the Board rectified the mistake and allotted the temporary transit accommodation to Chandrakant Parab in lieu of room no.16. He has deposed that Chandrakant Parab has since expired and that his wife has been allotted the permanent alternative accommodation in lieu of room no.16.

26. The evidence of PW1 and DW3 proves that the suit room was earlier in possession of Ganuram as a tenant thereof. Though the rent in respect of the suit premises was paid in the name of Ganu Rama, it is on record that Krishna Baad, the father of the plaintiff and defendant No.3 had secured possession of the suit room in the year 1947 and he stayed in the suit room along with his wife and two sons viz. The plaintiff and defendant no.3 till the date of his retirement in the year 1969. Said

Krishna Baad and his wife, i.e. the parents of the plaintiff and defendant no.3 settled in their native place. The fact that the plaintiff and defendant no.3 lived in the suit room along with their parents till 1969 is not in dispute. Hence, the documents such as school leaving certificates (Exhibit B and Exhibit 11, 11A), certificates issued by the employers (Exhibit K and 10), driving license (Exhibit E), and other documents produced by both the parties for the period prior to 1970 are not relevant to decide the issue.

27. The plaintiff as well as defendant no.3 are claiming to be in exclusive possession of the suit room since 1970 to the exclusion of the other. It is to be noted that the plaintiff has placed on record electricity bills for the year 1974-75 (Exhibit C Colly.) in the name of Krishna Baad and rent receipts (Exhibit-I Colly.) to prove payment of rent in respect of the suit room from 1963 till the year 1975. The letters (Exhibit J Colly.) were received by the plaintiff at the address of the suit room from 6.5.1968 to 22.11.1976. The fact that the plaintiff was in possession of rent receipts and electricity bills and that he had received the letters at the address of the suit room even during the period between 1970 to 1976 substantiates his contention that he was in possession of the suit room post 1970.

28. It is also pertinent to note that DW3 has admitted that Vijaya and

Kalpana, daughters of the plaintiff were born at Wadia Hospital, Bombay in the year 1970 and 1973. At the time of the birth of these two daughters, the wife of the plaintiff was residing in the suit room. DW1 claims that his father had brought the wife of the plaintiff to Bombay due to her health issues. This explanation is far from satisfactory. It is in evidence that the plaintiff was employed in Bombay and had he been staying in different premises, as alleged by the defendant, it is not probable that his wife would stay in the suit room exclusively occupied by defendant No.3.

28. DW3 has vaguely stated the the plaintiff was residing elsewhere. He has neither given the particulars of the place where the plaintiff resided since 1970 nor has he adduced any evidence in this regard. On the contrary, the evidence on record indicates that the ration card relating to the suit room was originally in the name of Krishna Baad –father of the plaintiff and Defendant No.3. Subsequently, defendant no.3 being the elder brother was shown as the head of the family. The name of plaintiff continued to be on the ration card till 1973. Though his name was subsequently deleted, the names of Prakash and Shivaji, the son and son-in-law of the plaintiff continued to be on the ration card. The plaintiff also obtained a separate ration card in the year 1976, wherein his address was shown as room no.3. The oral as well as documentary evidence, particularly the rent receipts (Exhibit I colly), electricity bills (Exhibit C

Colly.), and letters at (Exh. J Colly.), prove that the plaintiff was in possession of the suit room even post 1969 and this evidence belies the contention of DW3 that the plaintiff was residing elsewhere.

29. It is also relevant to note that the evidence produced by DW3, particularly the ration card and the electoral roll at Exhibit 7 for the year 1972 to 1977 proves that the defendant no.3 and his wife were the occupants of the suit room. The fact that defendant no.3 had received several letters (Exhibit 5) from the year 1972 onwards at the address of the suit room proves that defendant no.3 was also occupying the suit room. Though it is contended that defendant no.3 had acquired room no.16 and that he was occupying the said room, apart from the notice under Section 22(1)(b) (Exhibit 11) and letter dt.25.08.1976 (Exhibit 12), there is no evidence on record to prove that defendant no.3 and his family members were at any time in possession of room no.16. Defendant no.2-Board has explained that the room no.16 was in possession of Chandrakant Parab and that the notice under Section 22(1)(b) was erroneously issued in the name of defendant no.3. Defendant no.3 has also explained that the letter at Exhibit 12 was written by the Committee. It is also on record that the permanent accommodation in lieu of room no.16 has been allotted to the family of Chandrakant Parab. Furthermore, the evidence of PW3-Dinanath, who is one of the resident of Parmanandwadi Chawl and knows the plaintiff and defendant no.3

since their childhood, does not indicate that defendant no.3 was occupying room no.16. The above facts and circumstances belie the contention of the plaintiff that defendant no.3 was in possession of room no.16.

30. As noted above, the suit room was acquired by Krishna Baad-father of the plaintiff and defendant no.3. The plaintiff as well as defendant no.3 are not claiming any independent right in respect of the suit room and have not been able to prove that they were in n exclusive possession of the suit room to the exclusion of the other. On the contrary, the evidence adduced by the respective parties prove that the plaintiff and defendant no.3 were occupying the suit room since 1970. In such circumstances, neither the plaintiff nor defendant no.3 can claim exclusive right either in respect of the suit room or alternative permanent accommodation in lieu of room no.3.

31. It is to be noted that Section 94 (5) of the new Act i.e. the Maharashtra Housing and Area Development Act, 1976, provides that every occupier whether or not he accepts temporary accommodation shall have right to get alternative accommodation in the reconstructed building. As noted above, the evidence on record proves that the plaintiff and defendant no.3 were in joint occupation/ possession of the suit room. Consequently, the plaintiff and defendant no.3 have a right to the permanent alternative premises allotted in lieu of room no.3. In such

circumstances, sustaining the decree as it is would amount to depriving defendant no.3 of his lawful right to the suit room. Hence, the decree to that extent needs to be modified. It is stated that pursuant to the order of the Court, defendant no.3 has been put in possession of the permanent alternative premises. Suffice to say, such possession shall not confer exclusive right, title or interest in favour of defendant no.3 and his possession shall be construed to be on his behalf as well as on behalf of the plaintiff, till the time the property is partitioned or the parties make any other alternative arrangements or enter into amicable settlement.

32. Under the circumstances, the appeal is partly allowed. It is held that the plaintiff and defendant no.3 are entitled to have equal right to the permanent alternative accommodation in the reconstructed building allotted in lieu of room no.3 of Parmanand Chawl No.12.

33. The defendant no.2 is directed to allot the premises, being Room No.302, third floor of Siddharth Building in favour of the plaintiff-Ranganath Krishna Baad and defendant no.1a-Samabai Vithoba Baad, the widow of defendant no.3-Vithoba Krishna Baad. The impugned decree be modified accordingly.

(ANUJA PRABHUDESSAI, J.)