

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.388 OF 1999

Purushottam Govind

Deshpande (Decd.) By Lrs.And Ors.

...Petitioners

VS

Waman Bhaurao Otari (Decd.)

By Lrs. And Ors.

...Respondents

Adv. Sandeep M Phatak a/w. Adv. Adhik Kadam for the Petitioners.

Adv. T. D. Deshmukh a/w. Adv. S. S. Mohanty i/b. Adv. Ronak
Utagikar for Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 16 APRIL 2024

P.C.:

1. This Writ Petition is filed under Article 227 of the
Constitution of India by original defendant.

FACTS

2. The suit premises is an house No.1406, situated Kasba
Peth at Pune.

3. The respondents are the original plaintiffs who filed
eviction suit under the Bombay Rent Act being Civil Suit No.1 of

1988, on the ground of “default” and “disclaimer of title”.

4. Before filing the suit on the ground of default the landlord had issued demand notice dated 25 July 1987. After the suit summons was served on the original defendant, the defendant appeared and through their advocate original defendant no.1 (Purushottam Deshpande) filed his written statements dated 2 February 1990. After Purushottam died in the year 1990 his legal heirs including his son (Arvind Purushottam Deshpande) were brought on record. The said legal heirs of deceased Purushottam Deshpande file their written statement on 18 October 1993.

5. ‘Issues’ were framed by the Trial Court, after which the plaintiff examined Mr. Nandkumar Waman Otari as PW-1. The said witness of the plaintiff was cross-examined by the defendant. Thereafter, the defendant entered into the witness box by examining Arvind Purushottam Deshpande as DW-1.

6. After the evidence was closed by both the parties, the Trial Court heard both the sides and by its judgment and decree dated 11 July 1994 dismissed the suit filed by the plaintiff.

7. Being aggrieved by the dismissal of the suit, the

plaintiff filed an Appeal before the District Court.

8. The said Appeal filed by the original plaintiff was heard by the District Court, and by its judgment and decree dated 21 November 1998, the said Appeal filed by the original plaintiff was partly allowed. It was held by the Appellate Bench that there was no relationship of landlord and tenant between the original plaintiff (Waman Otari) and original defendant no.1 (Purushottam Deshpande) on the date of the issuance of notice before filing the suit. It was further held that the plaintiff was not able to prove that the defendant no.1 (Purushottam Deshpande) has committed default in payment of rent. It was further held that the plaintiff has proved that tenant has disclaimed the title of the plaintiff and as such, the plaintiff is entitled to recover the possession of the suit premises.

9. Against the concurrent findings recorded on point no.4 by the Appellate Bench of the Small Causes Court thereby granting possession of the suit premises to the plaintiff, the defendants have filed the present writ petition on 12 August 1999.

SUBMISSIONS

10. Mr. Phatak, learned counsel appearing on behalf of the

petitioner made his submissions :

(i) He submitted that once the finding has been recorded on Point No. I that “there was no relationship of landlord and tenant, between the original Plaintiff and the Original Defendant No. I on the date when the notice of suit has been issued,” consequently the suit should have been dismissed on that ground alone. Because if there is no relationship of landlord and tenant, then the Small Causes Court lacks jurisdiction to pass eviction decree against the Defendants.

(ii) That the observation made by the learned District Judge that the Defendant is not entitled to dispute the title of the plaintiff is not correct. The provisions of the Indian Evidence Act show that what is prohibited is that the tenant cannot claim and is estopped from contending that at the time of beginning of his tenancy, the Plaintiffs or his landlord had no title. He is obviously entitled to say firstly that after the commencement of the tenancy, the title of the landlord has come to an end and/or the subsequent landlord, who is claiming the derivative title to the premises, is not having the title. There is no estoppel against these defences.

(iii) That there is no ground of "Disclaimer of Title" for eviction as mentioned, in either section 12 and section 13 of the Bombay Rent Act, therefore the eviction cannot be granted on a ground, which is not mentioned in the Act.

(iv) That section 13(1)(a) of the Bombay Rent Act makes a reference of section 108(o) of the Transfer of Property Act, as a ground for eviction, which is a change of user/ damage to building etc. but not a "Disclaimer of Title".

(v) That forfeiture is a ground mentioned in Section 111(g) of the Transfer of Property Act for determination of lease. It is submitted that this particular ground for eviction is available if the property is leased out under section 105 to 107 of the Transfer of Property Act ie. general law and not for the property let out under the special law i.e. Bombay Rent Act.

(vi) That the observation made by the learned District Judge in the impugned Judgment to the effect that subsequently namely the Defendant No.1A has automatically become the tenant of the property is not even the case which has been pleaded by the Plaintiff in the suit and therefore, eviction decree cannot be passed

on the basis of some case, which is not even pleaded by the Plaintiff in the Plaint.

(vii) That the Defendant is entitled to take the defence that the said property is actually a "Benami property" and it has been purchased although in the name of the Plaintiff, the entire money flow has gone from the pocket of the Defendant No. 1 and therefore, the said property is the "Benami property" and in any case, the Small Cause Court would not have jurisdiction to give any finding on the issue of the title. But such defence is not prohibited by the Benami Transaction (Prohibition) Act because the provisions of section 4 of the said Act applies prospectively and it does not apply to the pending suits already filed, prior to coming into force of section 4 in the light of the Supreme Court Judgment in R. Rajgopal Reddy Vs. Padmini, reported in (1995) 2 SCC 630, overruling the Judgment in Mithilesh Kumari Vs Prem Behari Khare, reported in 1989 MhLJ 210 (Page-72). The suit in the present case is filed on 4.1.1988, whereas section 4 came into operation on 19.5.1988.

11. Mr. Deshmukh, learned counsel appeared on behalf of

the respondent and made his submissions :

(i) Section 4 of the Benami Transaction Act has come into force w.e.f. 19.05.1988. Section 4 of the Benami Transaction Act prohibits taking of any defence of benami transaction. Therefore, the defence of benami transaction taken by original Defendant no. 1 in his written statement dated 02.02.1990 is clearly hit by section 4, even though the suit has been filed prior to the enactment of section 4 of the Benami Transaction Act.

(ii) The original Defendant no. 1 passed away during the pendency of suit and therefore, Defendant nos. 1A to 1C were brought on record. Defendant no. 1A i.e. Arvind Deshpande claimed independent right in the suit premises and filed his written statement by taking stand contrary to the stand taken by the original Defendant no. 1. Defendant no. 1A claimed that he has been inducted as a tenant by the court receiver somewhere in the year 1963. It is the case of Defendant no. 1A that the original Defendant no. 1 had surrendered the tenancy of suit premises in favour of Plaintiff. The Defendant no. 1A has specifically admitted that he was joint with his father i.e. original Defendant no. 1 till his demise.

(iii) The Appellate Court was pleased to observe that the

Defendant no. 1 A has taken an independent stand in his personal capacity.

(iv) Appellate Court further observed that after the original Plaintiff purchased the suit premises, the Defendant no.1A became the tenant of the original Plaintiff. Appellate Court also observed that even the Defendant no.1A has denied the title of the Plaintiff. Therefore, in order to avoid multiplicity of proceedings and in order to do substantive Justice, Appellate Court was pleased to evict Defendant nos. 1A to IC on the ground of denial of title.

(v) If any legal representative impleaded under Order XXII, Rule 4 of CPC, sets up an independent title, then in such a case the impleadment can also be considered in personal capacity and even such independent claim can be denied in same suit. It is a trite principle of law that procedural law and/or requirement cannot betray substantive justice and multiplicity of proceedings should be avoided.

(vi) Even otherwise, alternatively, Court Receiver is an officer of the Court and not an agent of any party. Therefore, the Court Receiver is not authorised in law to create any fresh tenancy. Therefore, Defendant no.1A claiming to have been induced as a tenant by the Court Receiver, cannot claim fresh or independent

tenancy divorced from the tenancy of his father ie. original Defendant no.1.

(vii) Even though the Plaintiffs have not filed any formal cross objections in present Writ Petition challenging a particular findings, still the Plaintiffs can dispute findings that there was no landlord and tenant relationship between the original Plaintiff and original Defendant no.1.

(viii) Denial of title of Landlord amounts to determination of lease by forfeiture under section 111(g)(2) of the Transfer of Property Act. The role of determination of lease by forfeiture is so just that various Rent Control Legislations have recognized the same either expressly or impliedly within the scope of an Act injurious to Landlord or violating the terms of Tenancy.

(ix) Even otherwise, the suit property is in an inhabitable condition and no one is residing in the same since last several years. Therefore, conforming the eviction Decree will aid substantive justice.

(x) Mr. Deshmukh relied upon the Supreme Court *Jagdish Chander Chatterjee & Ors Vs. Shri Sri Kishan & Another* reported in *(1972) 2 SCC 461*.

12. I have heard counsel for both the sides. It is the matter

of record that the Trial Court had dismissed the suit, the Appellate Court also answered point No.1 in negative holding that there was no relationship of landlord and tenant in between the original plaintiff (Waman Otari) and original defendant No.1 (Purushottam Deshpande) on the date of the issuance of statutory notice. However, after holding that there was no relationship of landlord and tenant. The Appellate Court thereafter, came to a conclusion that since tenant has disclaimed the title of the plaintiff and as such the plaintiff would be entitled for recovery of the suit premises.

13. There is no dispute that (Purushottam Deshpande) was earlier a tenant of three rooms on the first floor of the House No.1406. So also, one Mr.Javdekar was tenant of one room on the first floor and three rooms on the ground floor. Both the counsel have today admitted before this Court that as of today the entire House No.1406 is in dilapidated and dangerous condition.

14. In the year 1952 there was partition suit filed by the (Dandvate Family /original landlord). Subsequently, an eviction suit under the Rent Act was filed by Janardhan Dandvate in the year 1958 against the (Purushottam Deshpande) and Javdekar.

The said eviction suit was decreed in favour of the landlord. Hence, Purushottam Deshpande and Javdekar filed an appeal before the District Court. During the pendency of the Appeal before the District Court, tenant Javdekar surrendered the four rooms in his possession (three rooms on ground floor and one room on the first floor) however, Purushottam Deshpande continued with the litigation.

15. During the floods in the Pune city in the month of July 1961, the suit structure was affected and part of the suit structure was collapsed (two rooms on the first floor which were in possession of the Purushottam Deshpande and one room on the ground floor which was earlier in possession of Mr.Javdekar).

16. Therefore, what remained, out of the total seven rooms in possession of the tenant was only one room on the first floor in possession of Purushottam Deshpande. Subsequently, on 24 January 1963 the possession of the remaining one room on the first floor, was handed over by (Purushottam Deshpande) to the landlord Janardhan Dandvate through bailiff. Therefore, in short according to me, the whole tenancy came to an end. As tenancy of the suit premises can come to an end, only by way of surrender or

else by way of an eviction decree.

17. In the meantime, it is the case of the (Arvind Deshpande) who is the son of tenant Purushottam Deshpande that he became tenants of four rooms in the house No.1406. According to him, the said tenancy was created in his favour by the Court Receiver, the Receiver being appointed in the partition suit of Dandavate's. It was further case that Arvind Deshpande that along with his family his father Purushottam Deshpande stayed with him. Also it is the case of the Purushottam Deshpande that he along with his wife purchased the suit property in the year 1968. However, according to him, the said transaction a Benami transaction in the name of one Mr. Waman Otari, who is the plaintiff in the present proceedings.

18. I need not go into the further details about benami transaction and the claim of Purushottam Deshpande and his wife of purchasing the suit premises, since the said dispute is not before me. If the claim of Arvind Purushottam Deshpande is of being a tenant of four rooms through Receiver; the only way to evict him could be, by filing a suit. If landlord/owner of the suit premises is of the opinion that Arvind Purushottam Deshpande

was tenant of the suit premises; A fresh eviction suit against the Arvind Purushottam Deshpande was necessary to be filed. Or if it was the claim that Arvind Purushottam Deshpande is a trespasser in the four rooms, then an eviction suit in the Civil Court was maintainable. Neither, of these two remedies has been adopted by Waman Otari in the present proceedings. Waman Otari filed first suit only against the Purushottam Deshpande, and after the death of the Purushottam Deshpande he added deceased legal heirs of Purushottam Deshpande under the provision of Order XXII of the Code of Civil Procedure being the legal heirs of the deceased, which included Arvind Purushottam Deshpande.

19. The judgment relied upon by Mr. Deshmukh of the Supreme Court in case of *Jagdish Chander Chatterjee* (supra). According to me, will not be applicable to the facts of the present case since in the said judgment of Jagdish Chander Chatterjee (supra). The suit was filed against the tenant which was decreed and appeal was preferred by the tenant before the District Court, Ajmer. The said Appeal of the tenant was allowed, therefore, the landlord filed Second Appeal before the Rajasthan High Court.

During the pendency of the Second Appeal in the High Court the tenant died, and his widow and children were brought on record as LR's. Subsequently, even widow of the tenant died hence, her legal heirs were already on record. A new point was urged that after determination of tenancy, the original tenant was only a statutory tenant under the Rent Act, Therefore, protection granted by Section 13 of the Rajasthan Rent Act was not available to the heirs of the tenant. It was held that the legal heirs of the tenant were entitled in their own rights to urge that the landlord did not require the premises *bona fide*. In the present proceeding the claim of Arvind Purushottam Deshpande is that his father was a tenant of the suit premises earlier. However, pursuant to the floods and pursuant to an eviction decree being passed on 24 January 1963 his father had handed over the possession of the remaining rooms to the landlord through bailiff, hence, the tenancy of the father came to an end. The Court in a partition suit filed by the earlier landlord had appointed a Receiver. The said Receiver had created a fresh tenancy in the name of Arvind Purushottam Deshpande. Therefore, the facts in the present proceedings that of Jagdish Chander Chatterjee (supra), are quite different. Hence, the ratio of the Supreme Court in Jagdish Chander Chatterjee (supra)

are not applicable to the present proceedings.

20. The Writ Petition is allowed and Rule is made absolute.

(RAJESH S. PATIL, J.)