

# SUPREME COURT OF INDIA

Krishnapasuba Rao Kundapur

Vs.

Dattatraya Krishnaji Karani

C.A.No.700 of 1964

(K. Subba Rao, J. R. Mudholkar and R. S. Bachawat, JJ.)

06.10.1965

## JUDGEMENT

### **BACHAWAT, J.:**

1. This appeal arises out of a suit by a landlord against a tenant and a sub-tenant for recovery of land situate near the cloth market in the city of Gadag, taluk Gadag, bearing City Survey No. 1577/17 measuring 124-4 sq. yards, excluding a portion thereof towards the northeast corner measuring about 10-11 feet in length and 10-11 feet in breadth. The Civil Judge Junior Division, Gadag dismissed the suit. On appeal, the Second Additional District Judge, Dharwar, set aside the judgment of the trial Court and decreed the suit. The High Court of Mysore dismissed a revision petition preferred by the defendants. The defendants now appeal to this Court by special leave.

2. The Additional District Judge, Dharwar found that the suit premises are land not used for agricultural purposes, and are reasonable and bona fide required by the plaintiff landlord for the erection of a new building and consequently, the ground of eviction mentioned in S. 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Act, No. 57 of 1947),

hereafter referred to as the Act, was made out. He repelled all the defence contentions and decreed the suit. The High Court in its revisional jurisdiction refused to interfere with this decree. Counsel for the appellants argued that the suit was barred by res judicata by reason of proceedings in Civil Revision Application No. 1893 of 1954 in the Bombay High Court. The trial Court and the first appellate Court concurrently found that the claim for eviction under S. 13(1)(i) was not barred by res judicata. The plea of res judicata was not taken by the appellants before the High Court and is no longer open to them. Before the High Court, the appellants attempted to raise a plea under S. 13(3) of the Act, but this plea was not raised in the first two Courts and was rightly rejected by the High Court.

3. Counsel for the appellants however, submitted that the suit premises are building and ground appurtenant to the building and are not land within the purview of S. 13 (1)(i) and consequently the landlord cannot claim eviction under S. 13 (1)(i). To appreciate the contention, it is necessary to set out the following facts. The respondent landlord purchased the aforesaid City Survey No. 1577/17 on June 17, 1946. Defendant No. 1 was the lessee of the property under a rent note dated August 28, 1948 executed by the previous owner. The lease was for five years and expired on August 28, 1948. The present suit was instituted on June 3, 1957. The rent note covered the entire City Survey No. 1577/17 including not only the suit land but also the portion on the northeast corner outside the purview of the suit. On the northeast corner there is a temporary structure erected by the landlord, and this structure is in the occupation of a sub-lessee, one Malkajappa Nargund. The Courts below have concurrently found that the suit in respect of the land excluding the northeastern portion is maintainable. This finding is no longer challenged. In this appeal, we are, therefore, not concerned with the tenancy in respect of the portion on the northeast corner. Defendant No. 1 constructed a building on the suit land, and both defendants are carrying on business there. The respondent now seeks to recover possession of the suit land under S. 18(1)(i) of the Act. Section 5(8) of the Act defines 'premises' thus:

"5. In this Act unless there is anything repugnant to the subject or context -

\* \* \* \*

(8) 'premises' means-

(a) any land not being used for agricultural purposes,

(b) any building or part of a building let separately (other than a farm building) including-

(i) the garden, grounds garages and outhouses, if any, appurtenant to such building or part of building.

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial. enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house,"

4. The definition of 'landlord' in S. 5(3) of the Act shows that a landlord is a person who is entitled to receive rent in respect of any premises or who would be entitled to receive the rent if the premises were let to a tenant. Section 5(11) shows that a tenant is a person by whom or on whose account rent is payable for any premises Section 13(1)(i) reads:

"13. (1) Notwithstanding anything contained in this Act but subject to the provisions of S. 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

\* \* \* \*

(i) that where the premises are land such land is reasonably and bona fide required by the landlord for the erection of a new building:"

5. The language of S. 13(1) read with the definitions of 'premises', 'landlord' and 'tenant' in S. 5 shows that the expression 'premises' in S. 13(1) refers to the subject-matter of a letting for which rent is payable and in respect of which there is a relationship of landlord and tenant.

6. A combined reading of Ss. 5(8) and 13(1)(i) shows that under S. 13(1)(i) the landlord can obtain a decree for eviction in respect of premises which are land and not in respect of premises which are building or are garden, grounds etc., appurtenant to the building. The question in issue is whether the suit premises are land or whether they are building and ground, appurtenant to the building.

7. Clause 2 of the rent note dated August 28, 1943 covered the entire City Survey No. 1577/17, but we are now concerned only with the letting of the portion of the property excluding the shop on the northeastern corner. The rent note stated that the subject-matter of this letting for which the rent was payable by the tenant was open land with a "khatta". It is common case before us that "khatta" is not a building. Clause 1 stated that on a portion of the land the tenant had built a shed of corrugated iron sheets at his own cost. Clause 5 stated that on the termination of the tenancy the tenant would remove the structures raised by him including the timber the pillars, the iron materials and the stores used for paying the floor. On a plain reading of the lease, it is clear that the subject-matter of the letting was open land and the rent was payable in respect of the open land only and not in respect of the structures raised by defendant No. 1. We were referred to decisions in respect of building leases. It is a question of construction of a building lease whether the lease is a demise of the land only, or whether it is a demise of the land together with the building to be constructed by the tenant. See *Bhatia Co-operative Housing Society Ltd. v. 12. V. D. C. Patel*, 1953 SCR 185 at pp 194-196: (AIR 1953 SC 16 at pp. 20-21); *Dr. K. A. Dhairvawan v. J. R. Thakur*, 1959 SCR 799 at pp. 803-808. (AIR 1958 SC 789 at pp. 791-794). In this case, we are not concerned with a building lease. The building on the land was constructed by the tenant at this own cost before the execution of the rent note. The building belonged to the tenant and was not the subject-matter of the letting. The land only was the subject-matter of the letting. Consequently, the premises are land within the meaning of S. 13(1)(i).

8. The decision in *Vinayak Gopal v. Laxman Kashinath*, AIR 1957 Bom 94 relied on by the appellants has no application. That case decided that an open plot of land may be premises let for residence, education, business, trade or storage within the meaning of S. 6 (1) of the Act. The problem in the present case is not whether an open plot of land can be let for residence, education, business, trade or storage, but whether an open plot of land only has been let by the landlord to the tenant. No other contentions were urged before us.

9. In the result, the appeal is dismissed with costs.

Appeal dismissed.