Bai Chanchal and Others

Vs

Syed Jalaluddin and Others

Civil Appeal No. 1460 of 1969

(J. C. Shah, V. Bhargava JJ)

11.09.1970

JUDGMENT

BHARGAVA, J. -

1. The predecessors-in-interest of plaintiff-respondents 1 to 3 gave, in 1895, land, bearing Serial Nos. 503 and 506 of Asarva within the limits of Ahmedabad Municipal Corporation, on lease for a period of 49 years at an annual rent of Rs. 199/-, to three persons, Sha Ramchandra Ambaram, Pardesi Sukhlal Anandram and Mehta Bogha Mugatram. These original lessees, during the currency of the lease, made transfers of their rights and also granted sub-leases. A number of Chawls and some other buildings were constructed on the land and some of them were let out on rent. In 1945, the lessors, after serving notice on the occupants to give vacant possession, filed a suit for recovery of possession. The suit was decreed on 8th July, 1946 on the basis of a consent decree as against some of the occupants including the four defendant-appellants. In the agreement, on the basis of which the decree was passed, it was agreed that the defendant-appellants will continue in possession of property for a period of five years and will hand over possession after the expiry of this period of five years. For this period, they undertook to pay mesne profits every month at various rates on the lands in their possession. Between them, the four appellants were required to pay at Rs. 227-10-0 per mensem making up an annual amount of mesne profits of Rs. 2,731-8-0. Similar terms were included in the consent decree against other defendants who joined the compromise on the basis of which the decree was passed on 8th July, 1946. The remaining defendants in the suit entered into a later compromise and, as a result, another consent decree was passed on 28th January, 1949 against those defendants. Under this decree, these remaining defendants were also entitled to continue in possession for a period of five years from the date of the decree, but were required to pay mense profits for this period. All the defendants governed by the two decrees, dated 8th July, 1946 and 28th January, 1949, had to pay between them mesne profits monthly which worked out to an amount of Rs. 7,314-8-0 per annum. Before the expiry of the period of five years prescribed by either of the two decrees, the Custodian of Evacuee Property, in 1950, took possession of all the properties, as one of the decree-holders had become an evacuee. After the property was released by the Custodian of Evacuee Property, an application was filed by the decree-holders on 26th March, 1953 for execution of the consent decree, dated 8th July, 1946 and, in that execution, possession was sought against the appellants of the property which was in their possession. Subsequently, a number of suits were filed for recovery of mesne profits also. The Execution Court directed eviction of the appellants after overruling the various objections raised by them in the execution proceedings. The decision of the Execution Court on the objections taken by the appellants was challenged in appeal before the District Judge, in second appeal before a single Judge of the High Court of Gujarat, and by a Letters Patent appeal before a Division Bench. All the Courts rejected the objections raised by the appellants and upheld the order of the Execution Court direction delivery of possession. It is

against the judgment of the Division Bench in Letter Patent appeal in this execution that the appellants have come up to this Court in this appeal by special leave.

2. It is unnecessary for us to mention all the various objections that were taken at various stages by the appellants in the Execution Court, in the Court of the District Judge, or before the single Judge or the Division Bench in the High Court. Only three of the points raised have been urged before us and, therefore, we are called upon to deal with these three points only.

3. The fixed point raised is that the decree which was passed on 8th July, 1946 was a nullity, because it was passed in contravention of Section 11(1) of the Bombay Rent Restriction Act No. XVI of 1939 (hereinafter referred to as "the Act"). This objection has been over-ruled by the High Court on the ground that the provisions of the Act were not attracted by the lease in question on the expiry of which the suit for ejectment was decreed under the consent decree, dated 8th July, 1946. Counsel appearing for the appellant urged that the terms of the decree passed as well as the terms contained in the lease-deed of 1895 show that the Act was applicable because the land, to which the suit for ejectment related, was covered by the definition of "premises" to which the Act applies. The expression "premises" is defined in Section 4(2) of the Act as meaning -

> (a) any building or part of a building let separately for any purpose whatever, including any land let therewith, or
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> (b) any land let separately for the purpose of being used principally for business or trade.

Admittedly, the lease of 1895 was not in respect of any building or part of a building let separately for any purpose whatever. Reliance was placed on Section 4(2)(b) of the Act on the contention that the land had been let for the purpose of being used principally for business or trade. Having gone through the documents relied upon by counsel for the appellants, we are unable to accept this submission. In the plaint of the suit, as well as in the decree dated 8th July, 1946, there is no mention of the purpose for which the land was let out by the lease of 1895. Reliance was, however, placed on one of the pleadings in the plaint which had been reproduced in the decree in which the plaintiff-respondent recited one of the terms of the lease in the following words :

> "On the expiry of the period of 49 years, the land shall be handed over without raising any dispute or objection or causing any obstruction, after removing whatever structures that might have been erected thereon and after making it as clear as it is."

The argument was that this pleading indicates that the land was let out for making structures and those structures could only be utilised by being let out on rent. This purpose would constitute business or trade. We are unable to see any justification for such an inference. The mere fact that there was a mention that structures that might have been erected will be removed can in no way lead to a reasonable conclusion that the principal purpose of the lease was the use of the land for business or trade.

4. Reference, in this connection, was also made to the terms of the lease of 1895; but we are unable to hold that it establishes the case of the appellants that the lease was taken principally for the purpose of using the land for business or trade. All that the lease mentions is that it is for constructing house and, at a later stage, there is a mention that "in the said fields, the lessees could construct houses in any manner or use it in any manner". The other parts of the lease, on which

reliance has been placed are as follows :

> "1. On the land of those fields we can build houses in any manner and we will receive income thereof and you will not raise any dispute or obstruction in respect thereof. We can spend any amount on the construction of those houses which we will not demand from you for whatever reason not we will have the right to deduct from rent payable to you.
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> 2. If any houses are constructed thereon, we will remove the superstructures. If we do not remove the structures then you will be the owners of the said structures. If you take them, then we and our heirs and representatives will not object."

We are unable to find even in these quotations from the lease any mention that the land is going to be used principally for the purpose of business or trade. The lease does mention that it was being taken for constructing houses. There was no mention at all, however, of the manner in which the constructed houses were to be utilised. Further, there is clear option given to the lessees that they could use the land in any manner if they did not construct any houses. These are terms on the basis of which it cannot be said that the land was being let out for business purposes.

5. The submission of counsel for the appellants was that, if the purpose was to construct houses and let them out on rent, that would constitute the use of the land for the purpose of business inasmuch as the lessees would be earning income from letting out those houses. We are unable to accept this submission, because we do not think that the word "business" or "trade" used in the definition of "premises" in Section 4(2)(b) of the Act comprehends within it a lease which is merely for constructing house. Learned counsel cited before us a number of decisions of Indian and English Courts, including decisions of the Privy Council and this Court, in which the scope of the word "business" was interpreted. That interpretation was given in connection with the word "business" as used either in income-tax law or in the terms of a covenant or the Companies Act, etc. We do not consider that it will be at all profitable to refer to them when interpreting the word "business" or "trade" as used in Section 4(2)(b) of the Act, because none of those interpretations will cover a case similar to the one before us, where the lease was merely a permissive one giving a right to the lessees to construct houses and let them out or to use the land in any manner. When the purpose of the lease was expressed in this way, it is impossible to hold that the principal use, to which the land was to be put by the lessees, was business or trade. As a consequence of this interpretation, it has to be held that the Act was not applicable to the lease of 1895 and, therefore, no question arises of the decree of 8th July, 1946, being invalid not the ground of contravening Section 11(1) of the Act.

6. The second point urged by learned counsel was that, by the consent decree itself, a new tenancy was created which was to continued for five years and, in the meantime, the Bombay (Rent Hotel and Lodging House Rates) Control Act, 1947, came into force and the appellants were protected from ejectment under the provisions of that Act. The consent decree does not state that a new tenancy is being created. The argument was that the terms of that consent decree should be interpreted as indicating an intention to create a new tenancy. We are unable to find any such terms. On the face of it, all that the consent decree envisaged was that, though the judgment-debtors were liable to immediate eviction, the decree-holders agreed to let them continue in possession for a period of five years. Since this concession was being granted as a special case, the decree-holders insisted that mesne profits should be paid at a much higher rate so much so that between all the defendants, governed by the two decrees of 8th July, 1946 and 28th January, 1949, the amount payable as mesne profits became Rs. 7,314-8-0 per annum which had no relation with the original

rent of Rs. 199/- per annum for the entire land fixed by the lease of 1895. In fact, the decree-holder sought further protection by requiring the judgment-debtors to pay the mesne profits in monthly instalments, and the instalments were so fixed that the mesne profits due for five years were to be paid within a period of three years. There was the further clause that, in case of default of payment of the mesne profits, the defaulting judgment-debtors could be immediately called upon to deliver possession. These terms can, in no way, be interpreted as creating a new tenancy constituting the decree-holders as landlords and the judgment-debtors as their tenants. The terms of the consent decree neither constituted a tenancy nor a licence. All that the decree-holders did was to allow the judgment-debtors to continue in possession for five years on payment of mesne profits as a concession for entering into a compromise. The argument advanced must, therefore, be rejected.

7. Reference was made by learned counsel for the appellants, in support of his argument, to a decision of the Bombay High Court in Gurupadappa Shivlingappa Itgi. v. Sayad Akbar Sayad Budan Kadri, (52 BLR 143) but that case, in our opinion, has no application. In that case, in the consent decree itself, the first clause was that the defendant admits that he is a monthly tenant of the plaintiff and is to continue in possession till January 31, 1948. This clause specifically and clearly, in the language used, made it manifest that the defendant was a monthly tenant and was to continue in that capacity in possession. It was in these circumstances that it was held that a new tenancy had been created from the date of the consent decree. In the case before us, the terms of the consent decree are in no way comparable with the terms used in the consent decree in that case. The language used in the consent decree in the present case contains no indication of any intention to create a tenancy, so that the Bombay Rent Control Act, 1947 could never apply to the case of the appellants.

8. The third point raised by learned counsel was that, since there was one single suit based on the lease of 1895 for ejectment of persons in possession, there could be only one single decree in that suit and the Court was incompetent to pass two separate decrees on 8th July, 1946 and 28th January, 1949. Counsel, in this connection, relied on the provisions of Rules 1 and 12 of Order XX of the Code of Civil Procedure which relate to the pronouncement of judgment and the Court passing a decree in a suit. These rules have really no relevance. On the other hand, Rule 3 of Order XXIII, C.P.C., clearly envisages a decree being passed in respect of part of the subject-matter of the suit on a compromise, and Rule 6 of Order XII, C.P.C., permits the passing of a judgment at any stage without waiting for determination of other question. Thus, it is clear that, in the same sit, there can be more than one decrees passed at different stages. In the present case, the first decree of 8th July, 1946, was based on a compromise between the plaintiffs and some of the defendants, while the second decree 28th January, 1949, decided the rights of the remaining defendants. The two decrees were separate and independent and neither of them could be treated as a nullity.

9. In these circumstances, the Execution Court was right in rejecting all the objections raised by the appellants and in directing delivery of possession. The appeal fails and is dismissed with costs.

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