

Jivram Ranchhoddas Thakkar and Another

Vs

Tulshiram Ratanchand Mantri and Others

Civil Appeal No. 1873 of 1974

(R. S. Sarkaria, V. R. Krishna Iyer, Jaswant Singh JJ)

17.03.1977

JUDGMENT

KRISHNA IYER, J. –

1. Scarcity of accommodation creates problems of misery which it is beyond this Court to solve except in some marginal, clumsy way. We mention this by way of prefatory observation because we are, in this case, faced with a situation where the facts are not too clear, the law has been ill-understood and the justice of the situation may justify a decision either way.

2. The landlords-respondent had let out to the first appellant, for the benefit of the joint family of which he was senior member, the suit premises consisting of three rooms. A suit for eviction was filed on the ground of sub-letting based on the fact that the first appellant had built a large house into which he had moved leaving the second appellant still in the suit premises. The Court found that there was no case of sub-letting and dismissed the suit. This did not end the story but gave rise to a fresh litigation which has spiraled to this Court now. The second litigation was for eviction under Section 13 (1) (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called the 'Act'). The foundation for the action was that the first appellant had built a large house for the use of the joint family and as such there was no longer any need for the tenant to occupy the suit premises. The trial Court decreed the suit although it held that the building which was let out was for the benefit of the joint family of the first appellant and the building which was newly constructed by the first appellant was his own and not of the joint family. The appellate Court, which is the final Court of fact, reversed this decree and dismissed the eviction suit, taking the view that since the new house built by the first appellant was his own and not of the joint family there was no right in second appellant or the other members of the joint family to occupy the new bungalow. The High Court, while not disturbing the findings of fact of the first appellate Court, was moved by the circumstance that the new building put up by the first appellant was a large bungalow and that the owner, first appellant, had allotted to his brothers and mother blocks in the house so built by him. This was a relevant circumstance, on its view, to direct eviction.

3. Counsel for the appellants assails this conclusion of the High Court on the score that Section 13 (1) (1) of the Act will be fulfilled only if the second appellant qua member of the joint family had a right to claim from the first appellant accommodation in the new building. This he could not claim if the findings of fact recorded by the courts below were right. In this view, Shri Palan urged that the High Court's direction for eviction was liable to set aside.

4. Shri Parekh, appearing for the landlords-respondents, urged two grounds in support of the High Court's order. He contended that after all, under Article 136, this Court's powers should be exercised

only in furtherance of justice and if the High Court had made directions which were essentially just they should not be interested with even if there were minor errors of law. Moreover, he sought to support the conclusion of the High Court by reading Section 13 (1) (1) of the Act as if there was an allotment to the brothers by the first appellant of blocks in his large bungalow. Shri Parekh also contended that the tenant was appellant 1 and not the Joint Hindu Family of which he was a member and as such the consideration bearing upon the joint family being the tenant is irrelevant. We have taken due note of this submission also and make the following direction in the interest of justice.

5. As we stated right at the beginning, this is a human problem although we have to decide it according to the legal guideline set out in Section 13 (1) (1). Making a humanist approach we felt that it was right to adopt a course of 'live and let live' by the landlord and tenant in this case. Making an overall view of the circumstances of the case, we suggested that the premises, which consist of three rooms, be divided in such manner that half of the premises would continue with the tenant and the other half would be surrendered in one month's time from to-day to the respondents. The necessary partition of the middle room, so as to make available half the total space to the tenant, would have to be carried out by the landlord. The cost of the partition wall or other improvised partition (which will be from floor to the roof) will be borne by both sides equally. Moreover, the tenant will have the right to use the lavatory and other necessary facilities or the enjoyment of the tenant but he will continue to pay the whole rent and other charges as was payable by him for all the three rooms together up till now. The trial Court will direct a commissioner to inspect the suit premises and see that the above direction regarding partition is carried out and, once that is done, will further direct that the appellants surrender possession of the other half within two weeks thereafter. The respondents undertake that in the event of the portion to be surrendered under this order by the appellants to them were to be re-let to anyone else. The first offer, on willingness to pay fair rent, will be to the appellants. These directions are based on mutual consent and undertakings by the respective Counsel on behalf of their parties and will be enforceable as such. On that footing, we modify the order of the High Court and direct the parties to bear their costs throughout.

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