Mrs Labhkuwar Bhagwani Shaha and Others

Vs

Janardhan Mahadeo Kalan and Another

Civil Appeal No. 479 of 1977

(V. D. Tulzapurkar, A. Varadarajan JJ)

11.11.1982

JUDGMENT

1. The short question involved in this appeal is whether the High Court was justified in interfering with the findings of fact recorded by the two courts below in exercise of its jurisdiction under Article 227 of the Constitution ?

2. The appellants-landlords filed an ejectment suit against defendant 1 (the tenant) and defendant 2 (allegedly unlawful sub-tenant) seeking possession of the suit godown on two grounds (i) that the suit godown was required bona fide for their own occupation and (ii) that defendant 1 had unlawfully sub-let the premises to defendant 2. The defendants resisted the suit contending that the landlords' need was not bona fide and that defendant 2 had been let in possession of the suit godown as a sub-tenant in March 1959 and as such was protected under Ordinance 3 of 1959. The trial court decreed the suit upholding both the grounds put forward by the landlords. The matter was carried in appeal by defendant 2 alone and in appeal the finding with regard to bona fide requirement was reversed but the finding of unlawful sub-letting was confirmed and the decree for eviction was upheld. The appellant court, agreeing with the trial court, held that the sub-letting was after May 21, 1959, being the relevant date under Ordinance 3 of 1959. Defendant 2 preferred a writ petition under Article 227 of the Constitution to the High Court and the High Court surprisingly on reappreciation of the material on the record reversed the concurrent finding of both the lower courts as regards the actual date of sub-letting and it came to the conclusion that there was sub-letting in favour of defendant 2 in March 1959 and as such he was protected under Ordinance 3 of 1959. The landlords have preferred this appeal to this Court.

3. Counsel for the appellants contended before us that the question as to what was the actual date of sub-letting, i.e. to say when was the 2nd defendant let in the suit godown as a sub-tenant was purely a question of fact and both the lower courts had on appreciation of the material placed on record by both the parties come to the conclusion that such sub-letting was long after May 21, 1959 and that therefore the 2nd defendant was not protected under the Bombay Rent Act read with the Ordinance. In reversing that finding, counsel contended, the High Court clearly exceeded its jurisdiction under Article 227 of the Constitution and we find force in this contention advanced by the counsel.

4. It does appear that the High Court was impressed by the fact that the landlords' own witness who was staying in the same building had made an admission in his deposition that defendant 2 was seen in premises in March 1959 and the High Court had felt that this admission, though not conclusive, would operate as an estoppel against the landlords, under the Evidence Act and lent support to the case of the 2nd defendant. The High Court also seems to have been impressed by the fact that defendant 2 had relied upon three/four receipts dated March 16, 1959, May 11, 1959, June 17, 1959

and July 20, 1959 respectively which he had produced showing payment of rent by him to defendant 1. If this material had been ignored by the lower courts it would have been a different matter. It was on an appreciation of this very material that the lower courts had come to a finding against the 2nd defendant. As regards the documentary evidence of the four receipts and an extract of account the lower courts had characterised the same as fabricated and not reliable. It appears that the trial court did not refer to admission made by the landlords' witness but appellate court dealt with it and observed that no reliance could be placed on such solitary stray statement made by the witness; it may be stated that there was an admission made by defendant 1 himself to the effect that he had taken the godown on rent from the landlord in February or March 1959 and that defendant 2 had come on the scene four or five months thereafter which would mean that defendant 2 was let in long after May 21, 1959. In other words as against the admission made by the landlords' witness there was the admission made by the defendant 1 which put defendant 2 out of the court. In this state of evidence the two courts below on appreciating the entire material had come to the conclusion that defendant 2 had come on the scene long after the relevant date under the Ordinance and was not entitled to any protection. The High Court felt it could reappreciate the material and come to its own conclusion because it was a jurisdictional fact that was required to be determined. Whether jurisdictional or otherwise it was purely a question of fact requiring adjudication on appreciation of evidence. It could not convert itself into even a mixed question of fact and law entitling the High Court to interfere. Nor was it any question of proper interpretation of the ordinance for being applied to the facts obtaining in the case. The question simply was what was the actual dates of sub-letting and the High Court under Article 227 could not interfere with the finding recorded by the lower courts on the point. The position in law in this behalf is well-settled and if necessary reference may be made two decisions of this Court in Babhutmal Raichand Oswal v. Laxmibai R. Tarte (AIR 1975 SC 1297 : (1975) 1 SCC 858) and Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide (AIR 1977 SC 1222 : (1977) 2 SCC 437).

5. Counsel for the respondent relied upon a decision of this Court in Mohd. Shafi case (Mohd. Shafi v. VII Addl. Dist. & Sessions Judge, AIR 1977 SC 836 : (1977) 2 SCC 226 : (1977) 2 SCR 464) but in our view the same cannot avail the respondent. The question that arose there was whether Explanation (iv) to Section 21(1) of U.P. Act 13 of 1972 was attracted to that case and that depended upon the applicability to the facts of the correct interpretation of the Explanation and that was clearly a mixed question of law and fact and this Court held that if the High Court found that in reaching its conclusion on this question the District Court proceeded on a wrong interpretation of the Explanation the High Court could correct the error and set aside the conclusion reached by the District Court.

6. In view of the above discussion it is not possible to sustain the order of the High Court. The appeal is allowed, the impugned order is set aside and the decree passed by the trial court and confirmed by the first appellate court is restored on the ground of unlawful sub-letting by the 1st defendant in favour of the 2nd defendant.

7. Three months' time is granted to vacate the premises on the usual undertaking to be filed within four weeks from today. There will be no order as to costs.

8. Delay in filing additional documents is condoned.

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