

Kishanlal Laxminarayan Karava

Vs

Shalinibai

Civil Appeal No. 2250 of 1977

(M.M. Punchhi, S.C. Agarwal JJ)

07.11.1990

JUDGMENT

1. The cause of this appeal by special leave is an eviction suit filed by the appellant to have evicted the respondent from a premises situate in the town of Phaltan in the State of Maharashtra. It is the case of the appellant that he was a tenant in some premises -and his landlord had Asked him to quit. In strained circumstances, he alleges, he purchased the property in dispute in order to live in it. As per the Plan which is part of the Paper Book, the premises can be divided in two parts. The front built up portion opens on the main road and on the rear side is a common courtyard. The other built up portion opens on the rear side road and at the rear of it is the aforementioned common courtyard. In one room of the rear side portion, there is a tenant with which we are not concerned. The remaining portion is in possession of the landlord, which comprises of two rooms and a bathroom. The tenanted portion is a bigger portion and better situated as it opens on the main road as also in the common courtyard.

2. The landlord pleaded before the trial court that he required the premises in possession of the tenant for bona fide use and occupation as the portion already in his occupation was dilapidated and was not worth living. The claim of the landlord was contested. The trial Court found against the appellant and rejected his claim. On appeal, however, the Appellate Court took a different view. The Appellate Court found that on the facts and circumstances of the case, it could be said that the appellant reasonably and bona fide required the premises in his building for his own occupation. When venturing to discuss the issue of comparative hardship in the case, as required under S. 13(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Appellate Court seemingly was in favour of the appellant but did not express its views in so many words. A via media apparently was found when the appellant's counsel suggested before it that there could be exchange of possession between the landlord and the tenant of the portions of the house in their respective possession, and the tenant could continue as such on the, same terms in the exchanged premises. Some time was sought on behalf of the tenant for shifting which was granted. On these terms, the appeal was allowed, ordering exchange of premises.

3. The judgment and decree of the Appellate Court was questioned by means of a Writ Petition in the High Court. The High Court took the view that S. 13(2) of the Act only required comparative hardship to be seen in the event of the bona fide need of the landlord being established but the provision nowhere permitted an exchange of premises. On that basis, the Writ Petition was allowed and the eviction suit of the appellant dismissed which has given rise to this appeal by special leave.

4. Section 13 (2) of the Act is a provision which mandates the Court before passing the decree for eviction on ground of bona fide requirement specified in clause (g) of subsection (1) to take into account all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant and whether greater hardship could be caused by passing' the decree than by refusing to pass it. The availability of accommodation for the tenant to be examined by the Court, in our view, is wide enough to include another premises being made available to the tenant by the landlord himself We fail to see how such a course as was adopted by the District Judge in the instant case was not permissible. It appears that the Appellate Court without finally determining the comparative hardship straightway ventured to decide in asking the parties to exchange the premises in their respective possessions. The High Court based its decision only on one ground regarding which we have recorded our disapproval. Still the matter would have to be examined further as on whom would work greater hardship and in the absence of a clear finding in this regard, remand, would be necessitated to the District Judge, Satara, the Appellate Court, for reconsideration of the matter. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and remit the case back to the District Judge, Satara, confining the remittal to the question of comparative hardship. He is expected to decide this question within three months from the date of the receipt of this order as the litigation is very old and must come to an end quickly. Parties are left to bear their own costs.

Appeal allowed.

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