

Weney D. Souza

Vs

G.A. Conceicao and others

Civil Appeal No. 1500 of 1978

(N. M. Kasliwal, K. Ramaswamy JJ)

12.04.1991

JUDGEMENT

KASLIWAL, J.:-

1. This appeal by special leave has been filed by the defendant in a suit for possession against judgment of Division Bench of the Bombay High Court dated 16th July, 1976.
2. A non-agricultural plot of land admeasuring 1200 sq. yards situated in village Malad belonged to D. B. Conceicao (since deceased). Plaintiffs Nos. 1 to 4 being the brothers and plaintiff No. 5 widow of D. B. Conceicao filed a suit on 28th March, 1959 in the City Civil Court, Bombay for possession of the suit land against the present appellant. D. B. Conceicao had died on March 3, 1959 before filing of the above suit. The suit was brought on the ground that the defendant No. 1 (appellant) had entered into possession of the suit land under a writing of October 3, 1953. In the said letter it was stated that the suit land admeasuring about 1200 sq. yards had been given on a ten years lease. The defendant had to pay annually Rs. 240/-. It was alleged that the said lease was required to be registered compulsorily and in the absence of such registration the lease was void and the defendants were trespassers. It was also alleged in the plaint that the defendant No. 1 did not pay any amount except a paltry sum of Rs. 50/- paid at the time when defendant No. 1 was put in possession of the land. Defendants Nos., 2 to 8 were tenants kept by defendant No. 1.
3. The appellant admitted that there was an agreement of lease between him and the deceased and that he was also put in possession of the suit land by the deceased. According to him, there was no necessity of executing a formal or legal document. As regards the payment of rent, his allegation was that he had offered to pay rent to the landlords but they refused to accept the same. Rent sent by money orders were also refused. The appellant also pleaded protection under Section 53A of the Transfer of Property Act. The plea was also taken in the written statement that the City Court had no jurisdiction to entertain the suit as it was a suit between the landlord and the tenant and as such governed by the provisions of the Rent Act. However, this contention was expressly given up at the stage of trial.
4. The learned trial Court held that the defendant No. 1 was not entitled to invoke the doctrine of part performance as envisaged under Section 53A of the Transfer of Property Act. The trial Court also recorded a finding that the defendant No. 1 was not a trespasser in view of the fact that the landlord himself had put in possession as a tenant. However, the trial Court having held that the defendant was not entitled to invoke the doctrine of part performance as he failed to perform his part of the contract, decreed the suit for possession. On appeal, learned single Judge of the High Court allowed the appeal and dismissed the plaintiffs' suit. Learned single Judge held that the basis

of the claim for possession as alleged in the plaint was that the defendants were trespassers, but in view of the fact that the defendants cannot be considered as trespassers in view of the evidence on record, the plaintiffs' suit was liable to be dismissed as they failed to make out the case alleged in the plaint. The plaintiffs aggrieved against the judgment of the learned single Judge filed a Letters Patent Appeal before the Division Bench of the High Court. Learned Judges of the Division Bench of the High Court set aside the judgment and decree of the learned single Judge and restored the judgment and decree passed by the trial Court. According to the learned Judges the agreement to lease was for a period of ten years and the lessee had agreed to pay rent of Rs. 240/- annually. Admittedly this agreement of lease was not registered. It was held that in view of mandatory provisions of Section 107 of the Transfer of Property Act such lease required registration and such lease being not registered the transaction was void. It was further held that the possession taken by the lessee under such a void lease, is therefore, clearly that of a trespasser.

5. We have heard learned counsel for the parties and have perused the record. It is an admitted position of the case that the defendant / appellant had entered into possession of the suit land with the tacit consent of D. B. Conceicao. The letter dated 3-1,0-53 in this regard reads as under:

53, Palli Village,

Bandra 3 X 53.

To

The Wencle D'Souze,

Dear Wencle,

I write to confirm that I have given to you my land bearing Survey. No. 1 and Hissa No. 2 admeasuring about 1200 yards square and situated in Varnai Village on the Marve Road, North of the village Tank on a ten years lease. You have to pay me annually Rupees Two Hundred and forty only Rs. 240/-.

Trust all are well.

Yours sincerely,

Sd/-

D.B. Conceicao

6. The above letter is not a lease deed in itself and there was no question of applying the provisions of Section 107 of the Transfer of Property Act with regard to this document. It is important to note that this letter was written on 3-10-53 and D. B. Conceicao died on March 3, 1959 but during his lifetime he did not file any suit treating the defendants as trespassers. Though there is a dispute regarding the payment of rent being paid regularly to D. B. Conceicao during his lifetime but it has been found proved even by the Division Bench of the High Court that it did appear that on two occasions the lessee attempted to send money orders for a part of the amount due (from?) them, but these money orders had not been accepted by the lessor. It is also borne out from the record that after taking possession of the aforesaid land the defendant-appellant constructed building over the land and inducted many tenants during the lifetime of D. B. Conceicao himself. The suit was

brought on the ground as if the defendant-appellant and his tenants were rank trespassers and not on any other ground. In the facts and circumstances of this cases when the land in suit was non-agricultural, and the defendant-appellant was inducted as a lessee vide letter dated 3-10-53, there existed a relationship of landlord and tenant and decree for possession could have been passed treating the defendants as trespassers. In cases no rent or lease money was paid by the defendant-appellant then the remedy available to the plaintiffs was elsewhere. Thus the Division Bench of the High Court wrongly decreed the suit on the ground that the defendants were trespassers.

7. During the course of arguments learned counsel for the defendant-appellant candidly submitted that this Hon'ble Court may increase the lease money as it deems proper in view of the high inflation and rise in the prices all around. We gave several opportunities to learned counsel for the plaintiff-respondents to seek instructions in this regard and tell us regarding the rent prevailing in the neighbourhood of the suit land, but in spite of all efforts made by the learned counsel he was unable to contact his clients. In view of these circumstances we deem it proper to increase the lease amount to Rs. 2400/- annually in place of Rs. 240 / - to be paid from the date of the decision of the learned single Judge dated 17th August, 1973.

8. In the result this appeal is allowed, the Judgment of the Division Bench of the High Court dated 16th July, 1976 is set aside and the plaintiffs' suit is dismissed. It would be open to the plaintiff-respondents to take action for eviction according to law and this Judgment would not stand in their way. The lease money is increased to Rupees 2400/- per annum from 17th August, 1973 on the basis of a concession made by the learned counsel for the defendant appellant. The arrears of lease amount would be paid to the plaintiffs or deposited in the trial Court within three months. After deposit of such amount, trial Court shall take necessary steps for payment of the amount to the plaintiffs. The parties shall bear their own costs throughout.

Appeal allowed.

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