

Basheer Kadar Mastry

Vs

Mohammad Hanif Samad Sheikh and Another

Civil Appeal No. 2808 of 1980

(Kuldip Singh, N. M. Kasliwal JJ)

17.09.1992

JUDGEMENT

KASLIWAL, J.:-

1. This appeal by grant of special leave is directed against the Judgment of the Bombay High Court dated 20th August, 1980.

2. Property C.T.S. No. 610/A, situated in Khanbhag, Sangli, District Sangli (Maharashtra) originally belonged to one Lalbi. Mohd. Hanif Samad Sheikh and Ahmed Sahib Samadh Sheikh respondents now represented through their legal representatives purchased the said property from Lalbi by a registered sale deed dated 13-3-1972. The appellant Basheer Kadar Mastry was the tenant of the original landlord in the suit premises on a rent of Rs. 15/- per month. The respondents after having purchased the property filed Civil Suit No. 258 of 1972 In the Court of Joint Civil Judge, Sangli against the appellant for possession on the grounds of default in the payment of rent and bona fide necessity of the suit premises for the personal use and occupation of the respondents. The plaintiffs in the suit had alleged that the rent had fallen due from 1-1-1966 and this has given rise to a cause of action for claiming eviction on the ground of default in payment of rent. The trial Court by Judgment dated 28-7-1973 dismissed the suit so far as the claim for arrears of rent was concerned, but decreed the suit for possession holding that the respondents required the suit premises reasonably and bona fide for their personal use and occupation.

3. The tenant/ appellant filed an appeal and the learned Assistant Judge, Sangli allowed the appeal by order dated 30th March, 1974 and remanded the case to the trial Court with a direction to grant an opportunity to the parties to lead additional evidence on the point of sale deed and arrears of rent. As regards the question of reasonable and bona fide necessity the finding was set aside and the appellate Court gave a direction that the said finding shall remain undisturbed. After remand the trial Court gave a direction to the defendant to deliver actual possession of the suit property to the plaintiffs unless the defendants deposit in Court the amount of Rs. 198.37 paise together with full costs of the suit and the cost in Civil Appeal No. 137 of 1973 on or before 30th April, 1974 failing which the plaintiffs shall obtain actual possession of the suit premises by executing the decree in the suit.

4. The plaintiffs did not file any appeal against the aforesaid Judgment of the trial Court, but the tenant filed an appeal aggrieved against the judgment of the trial Court dated 26-4-1974. The main ground of challenge raised by the tenant was that under Section 12(3)(b) of the Bombay Rent Act

the defendant cannot be ordered to deposit the arrears of rent for the period prior to the sale deed dated 13-3-1972 made in favour of the plaintiff/ landlords. The Extra Asstt. Judge Sangli who heard the appeal decided the aforesaid question in favour of the tenant. The Extra Assistant Judge by his order dated 30th July, 1975 allowed the appeal and set aside the judgment and decree of the trial Court dated 26-4-1974 and gave a direction as under:-

"The plaintiffs' claim for possession of the suit premises is dismissed. The defendant do pay Rs. 367/- to the plaintiffs towards the assigned money claim in the sale deed dated 13-3-1972 (Exh. 93). Out of the amount of Rs. 495/- deposited in the court by the defendant, if still lying in the court, Rs. 374.16 shall be paid to the plaintiffs and the balance remaining shall be payable to the defendant unless he agrees to adjust the same towards the rent from 1-4-1974 onwards.

In the facts and circumstances of the case, the plaintiffs shall get proportionate costs on Rs. 367/ - which is the money claim decreed so far as the entire costs inclusive of the costs of previous appeal are concerned.

As regards the costs of this appeal the defend ant-appellant shall get half the costs of this appeal from the plaintiffs-respondents."

5. The respondent/ landlords aggrieved against the judgment of the lower appellate Court filed a special civil application in the High Court. The High Court held that where a tenant allows rent to run in arrears and a right to recover those arrears of rent is transferred along with the property to the purchaser, then along with it passes also the right in respect of the arrears of rent viz. right to recover possession. The High Court further held that purely personal rights may not be capable of such devolution, but where a covenant which arises out of the property and runs with the property, then it is capable of being exercised by a person acquiring the interest on devolution whether by law or by deed. The High Court after taking the aforesaid view held that there was no dispute in the present case that the rent remained to be paid for all the period and was not even paid in accordance with the trial Courts' direction. There will, therefore, have to be a decree for possession against the respondents. The High Court further directed to pay an amount of Rupees 3740.16 paise in Special Civil Application No. 2809 of 1975 which pertained to the present tenant-appellant. The High Court granted three months' time to the tenant to vacate the premises. Aggrieved against the judgment of the High Court the tenant has come in appeal before us by grant of special leave.

6. It would not be necessary to go into all the questions raised in this appeal inasmuch as the appeal succeeds on a short ground. A perusal of the facts stated above clearly show that the trial Court after remand of the case had calculated the entire arrears of rent along with education tax and after adjusting the amounts already deposited by the tenant had recorded a finding that the net amount due from the defendant/ tenant till the end of 31-3-1974 comes to Rs. 198.37 paise. The tenant was also liable to pay the full cost of the suit and the cost in Civil Appeal No. 137 of 1973. The decree for delivering actual possession of the suit property was made conditional on failure of the said amount being deposited or on before 30th April, 1974. Admittedly the respondents did not go in appeal challenging the judgment and decree passed by the trial Court. It is only the appellant-tenant who went in appeal against the aforesaid judgment and decree of the trial Court. The First Appellate Court allowed the appeal in favour of the tenant/ appellant and dismissed the plaintiffs' claim for possession of the suit premises. It may be noted that according to the finding of the First Appellate Court the plaintiffs were not held entitled to claim any arrears of rent prior to 13-3-1972 for making it as a ground of default in payment of rent for seeking eviction. The defendant-tenant was required

to pay such amount as a money claim assigned by the original landlord in the sale deed dated 13-3-1972. The plaintiff-landlords then challenged the aforesaid order of the First Appellate Court by filing a Writ Petition (Special Civil Application No. 2809 of 1975) in the High Court. In our opinion even if the High Court held that the purchaser-landlords were entitled to claim the arrears of rent having fallen due to the original landlord from 1-1-1966 to 13-3-1972, no decree for delivery of possession could have been passed against the tenant-appellant when he had deposited the entire amount of arrears of rent along with costs of the suit and the costs of Civil Appeal No. 137 of 1973 as directed by the trial Court itself in its order dated 26-4-1974. We agree with the contention of the learned Counsel for the appellant that the High Court in this regard wrongly recorded a finding that the rent remained to be paid for all the period and was not even paid in accordance with the direction of the trial Court. This observation of the High Court that the tenant did not pay the amount even in accordance with the trial Court's directions have been wrongly recorded inasmuch as the tenant had deposited such amount. On 28-2-1992 when this appeal came up for hearing the learned Counsel appearing for the tenant-appellant contended that in pursuance of the trial Court's direction, the amount mentioned therein was deposited on 30th April, 1974 and, therefore, the appellant was not liable to eviction from the premises in question under the decree of the trial Court. In view of the above submission made by the learned Counsel for the appellant we adjourned the matter for three weeks to file a further affidavit in support of the above contention and two weeks thereafter to the respondent for their reply. The tenant-appellant then submitted an affidavit to the effect that he had deposited Rs. 477.77 on 30-4-1974 in Suit No. 258 of 1972 towards the rent and costs as per the directions of the trial Court dated 26-4-1974, He further stated in the affidavit that the trial Court had directed him to deposit an amount of Rs. 198.37 with costs of the suit and the costs in Civil Appeal No. 137 of 1973 on or before 30-4-1974. He further deposed that he had complied with the conditional decree and, therefore, no decree for possession be passed against him. The receipt for deposit of the aforesaid amount has also been annexed with the affidavit. The above affidavit and the receipt has not been refuted or challenged on behalf of the respondents.

7. We, therefore, accept the contention of the tenant-appellant that he had complied with the conditional decree passed by the trial Court dated 26-4-1974 and had deposited the entire amount on 30-4-1974. The plaintiff-landlords having not gone in appeal challenging the conditional decree passed by the trial Court dated 26-4-1974 are bound by the same. So far as the High Court is concerned it wrongly recorded that the tenant had not even paid the amount in accordance with the trial Court's directions. It was the tenant who had gone in appeal against the judgment and decree of the trial Court dated 26-4-1974 and the First Appellate Court had granted a further relief in his favour and as such even if the High Court had reversed the finding of the First Appellate Court, the tenant cannot be put to a greater disadvantage than what he got under the judgment and decree of the trial Court. The decree for possession has been passed only on the ground of default in the payment of rent. Thus taking in view the entire facts and circumstances of the case we are clearly of the view that in the interest of justice when the tenant-appellant has complied with the conditional decree of the trial Court, no decree for possession can be passed against him.

8. In the result we allow this appeal, and set aside the judgment of the High Court so far as passing the decree for possession against the tenant. In the facts and circumstances of the case there will be no order as to costs.                      Appeal allowed.

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