

SUPREME COURT OF INDIA

Benjamin Premanand Rawade (Dead) By Lrs.

Vs.

Anil Joseph Rawade

(A Anand and V Khare JJ.)

03.12.1997

ORDER

1. The respondent filed an eviction petition in the Court of Small Causes at Bombay against the appellant. The trial court, vide judgment dated 18-6-1976 found that the appellant was not a lawful sub-tenant and, therefore, was not entitled to the protection available under the Bombay Rent Act, 1947. Appeal filed by the appellant was allowed by the appellate court on 19-10-1982. The appellate court held that the appellant was a sub-tenant of the chief tenant. The judgment and order of the appellate court was put in issue through a petition under Article 227 of the Constitution of India in the Bombay High Court. The writ petition was allowed on 9-1-1986 and the order of the appellate court was set aside and that of the trial court restored. Hence this appeal by special leave.

2. We have heard learned counsel for the parties.

3. With a view to establish that the appellant was a sub-tenant of the chief tenant, the two essential conditions which were required to be satisfied by him through evidence were: (1) that the appellant was in an exclusive possession of the property in question and (2) that between the appellant and the chief tenant, there was a

relationship of lessee and lessor.

4. After perusing the record, we find that whereas the first condition can be said to have been established, namely, that the appellant was in the exclusive possession of the front room of the flat, the second condition has not at all been established. In the absence of satisfactory establishment of that condition, it cannot be said that the appellant was the sub-tenant of the chief tenant and that there was a real relationship of lessee and lessor between the two. That being the situation, no fault can be found with the judgment and order of the High Court impugned herein. This appeal, therefore, has no merits. It fails and is dismissed. There shall, however, be no order as to costs.

5. As directed by the High Court, the parties shall appear before the trial court for further directions.