

BOMBAY HIGH COURT

Rustomji Dinshaw Billimoria

Vs.

Dosibai Rustomji Master

O.C.J. Appeal No. 28 of 1921

(Norman Macleod, Kt., C.J. and Shah, J.)

21.06.1921

JUDGMENT

Norman Macleod, Kt., C.J.

1. The plaintiff in these three companion suits carried on the business of a furniture maker, having his business premises in Narayan Dhuru Street. He himself and his family occupied rented premises in Girgaon Road. About a year ago he purchased certain premises in Grant Road Low Level. Part of the ground floor of these premises was occupied by a printing press, the other rooms were used for various purposes, while the upper floor was occupied by a tenant for purpose of a School for Girls. After he had purchased these premises, the plaintiff did not show any intention to occupy any part of them for his own purposes. But thereafter he was served with a notice to quit by his landlord with regard to a portion of the premises occupied by him in Narayan Dhuru Street, Madeod o. J. and he had to find other quarters for his business. So he decided that he would use part of the Gi'ant Road property for that purpose. At the same time it occurred to him that it would be more convenient if he occupied the top floor of the Grant Koad property for residential purposes instead of continuing to live at Girgaon, as he would have his show rooms in one direction, his workshops in another; consequently he gave notice to quit to the tenants of the printing press, of the Girls' School, and of a particular room which was used as a garage.

2. The defendants resisted the notices and the plaintiff had to file these suits. They have been dismissed in the trial Court on the issue whether the plaintiff required the premises in the suits reasonably and bona fide for his own use and occupation. The plaintiff no longer wishes to turn out the defendants in the third suit, and, therefore, the appeal, so far as they are concerned, will be dismissed.

3. With regard to the 1st defendant Dosibai, no doubt from her point of view it is a hard case that

a lady who has been carrying on for several years a Girls' School on these premises, attended by a large number of girls, should be compelled in these days to seek for other quarters for the School. However, the Court is not concerned with hard cases, and the only question is whether the plaintiff requires the premises in suit reasonably and bona fide for his use and occupation. Ordinarily speaking, an owner of premises, if he says he wishes to use them for his own purposes, is entitled to do so. What the Rent Act endeavours to provide for is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a higher rent, or exact a higher rent from the tenant on a threat of eviction. It seems to me that the question in this case when the plaintiff was reasonably dissatisfied with the premises which he rented in Girgautn is irrelevant, because in any event the plaintiff was entitled to live in his own premises. He was not bound to continue in rented premises with all the uncertainties of that tenure. So that a great deal of irrelevant matter, has been introduced into these suits, because the plaintiff is obviously entitled to live in any portion of his own house which he chooses, provided he does not seek to occupy more space than is reasonably required for himself and his family. It can not therefore, be said that the plaintiff is acting unreasonably in saying that he wishes to occupy the upper storey for himself and his wife and his three children.

4. It has been suggested that he could live on the ground floor in the rooms 12,13,14 and 15 in the plan Ex. 5. But again if he wishes to live above the ground floor, there is no reason why he should be compelled to reside on the ground floor.

5. Then the defendant says "give me these rooms 12,13,14 and 15 for the School", but the plaintiff says " I want those for my business to compensate me for the space which I have lost in Narayan Dhuru Street". There is nothing unreasonable in that.

6. But it is suggested that the business could be carried on in the verandah and the open space. If the plaintiff says : " I am not willing to carry on my business in the verandah and the open space," I should have considerable sympathy with him, especially having regard to the sort of weather we have been experiencing during the last three or four days. There is no reason why the plaintiff should be compelled to take his business out of covered rooms and carry it on in the open.

7. I cannot, therefore, agree with the learned Judge in holding that this issue should be found in the negative, so that with regard to the suit against Dosibai there must be a decree for possession, but a reasonable time should be allowed to the defendant to vacate, which we fix at six months.

8. With regard to the other defendant who occupies a room for a garage, there is nothing that could possibly be said in his favour. The plaintiff wants that space for his own conveyance of whatever kind it may be. Clearly he is entitled to it. That defendant must vacate in three months.

9. The appeal is allowed against respondents Nos. 1 and 2 and dismissed as against respondent

No. 3.

10. No order as to costs in the case of any of the defendants in either Court, as ejectment proceedings could have been taken in the Small Cause Court.

Shah, J.

11. I agree.

Appeal allowed.