

## **BOMBAY HIGH COURT**

Govindram Salamatrai

Vs

Dharampal Amarnath

(Chagla Bhagwati, JJ)

26.02.1951

### **JUDGMENT**

#### **Chagla Bhagwati C.J.**

1. The plffs. filed the suit against the defts. alleging that they were licensees of certain property in the possession of the plffs., that the license had been properly & legally terminated & that they were entitled to an order of eviction against the defts. The contention of the defts, was that they were not licensees but tenants & therefore were protected under the Rent Restriction Act. The main & substantial issue which Shah J. had to determine was whether the defts. were licensees as alleged by the plffs. or tenants as alleged by them. The learned Judge came to the conclusion that the defts. were licensees & not tenants & thereupon passed a decree for ejection in favor of the plffs. It is from this decree that this appeal is preferred.

2. Before I deal with the merits of the case, there is a preliminary question that has got to be considered & decided & that is whether this Court had jurisdiction to try this suit. It is contended on behalf of the defts. that in view of Section 28, Bombay Act LVII (57) of 1947 this Court had no jurisdiction to try this suit & the suit should have been tried & disposed of by the Small Causes Court. Turning to Section 28, it confers upon the Court of Small Causes, Bombay, in Greater Bombay an extended jurisdiction. That extended jurisdiction is to entertain & try any suit or proceeding between a landlord & a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part II apply & to decide any application made under the Act & to deal with any claim or question arising out of the Act or any of its provisions; & the section further provides that no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question. Therefore, to the extent that the Small Causes Court has been conferred this special or extended jurisdiction, the jurisdiction of the High Court has been undoubtedly ousted. It is necessary to remember that under the Presidency Small Causes Court Act under Chap. VII the Small Causes Court had been given jurisdiction with regard to property of a certain value to pass orders of eviction in favor of owners

of property who wanted to eject either their tenants or their licensees. Applications under Chap. VII of that Act were not suits & the orders passed by the Small Causes Court were not decrees & the parties affected by the order made under that Chapter had the right expressly reserved to them to litigate the question of their title in the High Court. By reason of Section 28, to the extent that the applications under Chap. VII were between landlords & tenants & to the extent that the landlords sought ejectment against their tenants, these applications no longer continued to remain applications under that Chapter, but under Section 28 of the Rent Control Act they become suits & the suits result in decrees which are binding as between parties & are also conclusive subject to right of appeal under Section 29. Therefore to the extent that suits are between landlords & tenants, the jurisdiction of the High Court which had been expressly reserved under Chap. VII has been taken away & a new extended & special jurisdiction has been conferred upon the Small Causes Court again as far as suits between landlords & tenants are concerned.

3. Now, what is urged on behalf of the defts. is that Section 28 does not merely confer jurisdiction upon the Small Causes Court to entertain & try any suit or proceeding between a landlord & a tenant relating to the recovery of rent or possession of any premises, but it also confers jurisdiction upon the Small Causes Court to deal with any claim or question arising out of the Rent Control Act, & it is therefore urged that a question as to whether the deft. is a tenant or a licensee is a question that arises out of the Rent Control Act. There can be no doubt that when a pltf. files a suit against a deft. alleging that he is his licensee, it is a suit which cannot be entertained & tried by the Small Causes Court because it is not a suit between a landlord & a tenant, & judging by the plaint no question arises out of the Rent Control Act or any of its provisions which would have to be determined on the plaint as it stands. Equally so, in a suit so framed the only Court that would have jurisdiction would be the High Court because the jurisdiction of the High Court to deal with suits against licensees has not been taken away by any provision of the Rent Control Act. It cannot be suggested that the pltf. should anticipate any defence that might be taken up by the deft. that he is a tenant or that the initial jurisdiction which the Court had or which the Court lacked should be controlled or affected by any subsequent contention that might be taken up by the deft. The jurisdiction of a Court is normally & ordinarily to be determined at the time of the inception of a suit. Therefore when a party puts a plaint on file, it is at that time that the Court has to consider whether the Court had jurisdiction to entertain & try that suit or not. But it is argued that although the Court might have had jurisdiction when the suit was filed, as soon as the deft. raised the contention that he was a tenant the Court ceases to have jurisdiction to try that suit & that contention could only be disposed of by the Small Causes Court by virtue of the provisions of Section 28.

4. Therefore the question that I have to address myself to is whether the question as to whether the deft. is a tenant or a licensee is a question which arises out of the Act or any of its provisions.

Really, this question is not a question that has anything to do with the Act or any of its provisions. It is a question which is collateral & which has got to be decided before it could be said that the Act has any application at all. The very application of the Act depends upon the deft. being a tenant. If he is not a tenant, the Act has no application, & therefore before the Court can apply any provisions of the Act or decide any question arising out of the Act it has got to determine whether the deft. is a tenant who can claim the protection of the Act. It is a jurisdictional question which has got to be determined in order to decide whether the particular Court in which the suit has been filed has or has not jurisdiction to try the suit, &, in my opinion, Section 28 does not deal with jurisdictional questions which have got to be decided in limine before matters arising under the Act can be considered by the Court. I see no difficulty in giving this construction to the section because if Shah J. had held that the deft. was not a licensee but a tenant, then the question as to whether the deft. was protected under the Act or whether the plff. was entitled to a decree under the Act would be a question which would undoubtedly arise out of the Act & which would require consideration of the provisions of the Act, & therefore once that decision was arrived at, the suit would have to be transferred to the Small Causes Court in order that these questions should be decided as laid down by Section 28. If, on the other hand, as the learned Judge has held, the deft. is a licensee, no question arises as to applying any provisions of the Act & therefore this Court rightly dealt with the suit & passed a decree against the deft. as a licensee & not as a tenant. If Mr. Advani's argument were sound, the result would be that this Court would be in substance deprived of its jurisdiction in all suits for possession. According to Mr. Advani, all that the deft. would have to allege would be that he is a tenant. As soon as he made that allegation, this Court would have ceased to have jurisdiction. Whether the plff. filed the suit against a trespasser or he filed a suit against a licensee, the mere allegation by the deft. in the written statement would be sufficient to deprive the High Court of its jurisdiction. It is a well-established of construction that when the Legislature deprives the High Court of its jurisdiction the language used by the Legislature must be strictly construed. Equally so, when the Legislature confers special jurisdiction upon a subordinate Court, that language must also be strictly construed. I see nothing in Section 28 to warrant the contention that the High Court has been deprived of its jurisdiction in all suits for possession wherever the deft. takes up the contention that he is a tenant. The High Court has only been deprived of the jurisdiction in those suits where a landlord files a suit against his tenant & the tenant seeks the protection of the Rent Restriction Act. The High Court's jurisdiction is also deprived in those cases where, although the landlord might file a suit against a person alleging that he is a licensee or a trespasser, it may ultimately turn out that the deft. was not a licensee or a trespasser hut a tenant & he was entitled to the protection of the Rent Control Act. Whether a person is entitled to the protection of the Rent Control Act, whether a person is entitled to the benefit of any of the provisions of the Rent Control Act, all these are questions which only the Small Causes Court can decide & determine,

but whether a person is a tenant or a licensee or a trespasser are not questions which Section 28 has left to the determination of the Special Court set up under the Rent Control Act.

5. Reliance has been placed on a decision of Gajendragadkar J. in *Ebrahim Saleji v. Abdulla Ali*, 52 Bom. L. R. 897. There the learned Judge was dealing strictly with Section 29 & the right of appeal conferred under that section. Under Chap. VII there was no right of appeal against any order made by the Small Causes Court under that Chapter, but under Section 29 a right of appeal was conferred in respect of a decree passed under Section 28 to a bench of two Judges of the Small Causes Court. In the case before Gajendragadkar J. an application was made under Section 41, Presidency Small Cause Courts Act to eject the deft. on the ground that the deft. was a licensee. The trial Judge held that the deft. was a licensee & passed an order of eviction against him. The deft. preferred an appeal to a bench of two Judges of the Court of Small Causes and the appellate Court held that it had no jurisdiction under Section 29 of the Act. Gajendragadkar J. in revision held that the order of the Small Causes Court was erroneous, that the appeal lay under Section 29, & he sent the matter back to the Small Causes Court for disposal in accordance with law. It is in this judgment that the learned Judge has taken the view that the question whether a person is a licensee or a tenant is a question which arises out of the Act or any of its provisions, & therefore such a question can only be tried by the Small Causes Court under Section 28 and therefore an appeal lies under Section 29. The learned Judge seems to have been oppressed by the fact that if the trial Judge in the Small Causes Court had held in favor of the deft. that he was a tenant, the plff. would have had a right of appeal, but if the trial Judge held, as he did hold, in favor of the plff. the deft. would have had no right of appeal. The learned Judge, again with very great respect, seems to have overlooked the fact that although the deft. has no right of appeal, this being an order under Chap. VII, he had the right to file a suit in the High Court under Section 47 of the Presidency Small Causes Court Act. It is also not correct to state that if the decision had gone in favor of the deft. & the Court had held that he was a tenant, the plff. would have had a right of appeal. In that case the plff's. application under Chapter VII would have been liable to be dismissed. If the deft. was a tenant, then in order to eject him the plff. would have had to file a suit under Section 28 and not an application under chap. VII. If the plff. had filed such a suit, then there would have been a right of appeal to both parties under Section 29 of the Rent Control Act. Therefore, there does not seem to be any anomaly between the case of the plaintiff and the defendant. As I said before, the whole scheme of the Rent Control Act is merely to confer jurisdiction upon the Small Causes Court in respect of suits between landlord & tenant, & to that extent alone are the provisions of chap. VII affected & modified. To the extent that the Small Causes Court has jurisdiction to deal with applications between licensor & licensee, the provisions of chap. VII remain unaffected. Therefore in the case before the learned Small Causes Court Judge, as the suit was not between landlord and tenant, but, as the trial Judge held, it was

an application by a licensor against his licensee, the right of the deft. was not to appeal to the Small Causes Court, but, if he was dissatisfied, to come to the High Court & challenge the order passed by the Small Causes Court. Therefore, in my opinion, the decision given by Gajendragadkar J. is erroneous & the view taken by the appellate Court of the Small Causes Court was the right view, & questions whether a person is a tenant or a licensee, or a tenant or a trespasser, are not questions which fall within the purview of Section 28 & they must be determined by the Court which had jurisdiction independently of Section 28. [His Lordship after dealing with the merits of the case concluded :]

6. In my opinion, the case really turns on appreciation of oral evidence. As far as documentary evidence is concerned, it is entirely against the defts. & the oral evidence has been appreciated by the learned Judge below & in my opinion, rightly appreciated. Therefore, in my opinion, the view taken by the learned Judge was right. The result is that the appeal fails & must be dismissed with costs.

**Bhagwati, J.**

7. I agree, but I would like to add a few words of my own on the question of jurisdiction. Section 19, Presidency Small Causes Court Act, debarred the Small Causes Court from having jurisdiction, inter alia, in suits for the recovery of immoveable property, with the result that no suit could be entertained by the Small Causes Court for recovery of possession of immoveable property, be it from a licensee or a tenant or a trespasser. The only jurisdiction which was invested in the Small Causes Court by chap. VII of the Act was in regard to recovery of possession of immoveable property & certain summary jurisdiction was invested in the Small Causes Court, the applicant was allowed to take proceedings against the occupant in regard to the recovery of the possession of immoveable property in the cases specified in Section 41 of the Act, Section 47 enacted for stay of proceeding on the occupant giving security to bring a suit against the applicant. Section 49 however enacted that recovery of possession of any immoveable property under this chapter was not to be a bar to the institution of a suit in the High Court for trying the title thereto. This was sufficient to save the jurisdiction of the High Court which it otherwise had in regard to the suits for the recovery of possession of immoveable property. If the matter stood there, there was no question whatever of any suit for the recovery of possession of immoveable property ever being entertained by the Small Causes Court. When, however, the Bombay Act LVII [57] of 1947 came to be enacted by the Legislature, it invested the Court of Small Causes with the jurisdiction to entertain & try suits or proceedings between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part II of the Act applied & to decide any application made under the Act & to deal with any claim or question arising out of the Act or any of its provisions. This was a

special jurisdiction which was invested in the Small Causes Court & the limits of that jurisdiction were laid down in Section 28 of the Act. The only suits, therefore, which could be tried by the Small Causes Court, apart from the limitation of jurisdiction which was laid down in Section 19 of the Presidency Small Causes Court Act, were the suits which fell within the purview of Section 28 of the Bombay Act, LVII [57] of 1947. They were primarily suits between landlords & tenants relating to the recovery of rent or possession of premises to which any of the provisions of Part II of the Act applied. There were also contemplated within the several provisions of the Act various proceedings between landlords & tenants which arose by reason of the limitation on the rent to be charged by the landlords to the tenants for recovery of possession for certain purposes specified therein, the restoration of possession by the landlord to the tenant under certain circumstances therein contemplated, & so on. These were the ancillary provisions which were enacted in the Act for the protection of the tenants as against the landlords & these were the types of proceedings which were contemplated in Section 28 of the Act. Apart from the main provision which I have adverted to, namely, suits or proceedings between landlord & tenant relating to the recovery of rent or possession of any premises to which the provisions of Part II of the Act applied, it was certainly not within the contemplation of Section 28 of the Act to bring within the jurisdiction of the Small Causes Court suits between licensors and licensees or owners & trespassers. These were certainly not covered by the Act or any of its provisions. They were absolutely outside the purview of the Act & by no stretch of imagination could it be said that the Small Causes Court was invested with jurisdiction to try those suits by the enactment of Section 28 of the Act. The fallacy in the judgment of Gajendragadkar J. in *Ebrahim Saleji v. Abdulla Ali*, 52 Bom. L. R. 897, lay in this that the learned Judge observed (p. 899) :

"When Bombay Act LVII [57] of 1947 came to be passed it purported to confer wider jurisdiction on the Court of Small Causes in the matter of suits for ejectment against tenants or licensees."

8. With great respect to the learned Judge, it did nothing of the sort. It only invested the Small Causes Court with jurisdiction to entertain suits in ejectment against tenants. So far as the licensees were concerned, the bar which had existed against the Small Causes Court entertaining any suits for eviction against licensees & which had been enacted in Section 19, Presidency Small Causes Court Act, was not removed at all; it continued; & therefore except for those cases which fell within the purview of Section 28 of Bombay Act LVII [57] of 1947 the bar of jurisdiction in the Small Causes Court to try suits against licensees or against trespassers did continue and it was not competent to a licensor or an owner of premises to file any suit in the Small Causes Court against a licensee on the termination of a license or against a trespasser to eject him from the premises on which he was squatting without having any title thereto.

9. If this distinction is borne in mind, it follows that the High Court was the only Court which had jurisdiction to entertain and try "suits between licensors & licensees or between owners of property & trespassers. It would only be in those cases where the High Court, by trying such suits on issues being raised between the contesting parties, came to the conclusion that the relationship between the plaintiff & the deft. was not that of a licensor & licensee or as between an owner of the premises & a trespasser & came to the conclusion that the relationship was one, as contended by the defts. as between landlord & tenant, that the question of the ouster of the jurisdiction of the High Court under the provisions of Section 28 of Bombay Act LVII [57] of 1947 would ever arise. There was no bar to the High Court entertaining a suit for ejection of a licensee as such or a trespasser as such. It would be determined by a perusal of the plaint which was filed in the High Court as to whether such a suit was capable of being entertained by the High Court. Once it was a suit which could be entertained by the High Court, there was no question of its not being entertained by it. It would only be when the deft. filed a written statement & claimed the protection of the Rent Act that the question would arise to be determined by the High Court whether the relationship between the plff. & the deft. in the particular case before it was that as between landlord & tenant. If it came to the conclusion that it was not so, it would continue to have the jurisdiction to try the suit & would be able to try the suit on the merits to its logical conclusion. If, on the other hand, the High Court came to the conclusion that the relationship between the pltf. & the deft. was as between landlord & tenant, it would cease to have jurisdiction on that determination & the suit would be liable to be transferred to the Small Causes Court which, under Section 28 of Bombay Act, LVII [57] of 1947, would be the only Court to have jurisdiction to try the suits as between landlords & tenants falling within the purview of Section 28.

10. If we accept the contention of Mr. Advani, the result would be a very peculiar one. The moment a question was raised by the deft. that he was a tenant of the pltf. & was entitled to the benefit of the Rent Act, the suit would cease to be triable by the High Court & would have to be automatically transferred to the Small Causes Court. What would happen, one may question, if in accordance with the contention of the pltf. & contrary to the contention of the deft. the Small Causes Court came to the conclusion that the relationship between the pltf. & the deft. was that as between licensor & licensee. It would then follow that the Small Causes Court, by virtue of the bar which is placed on it by reason of the provisions of Section 19, Presidency Small Causes Court Act, would again cease to have jurisdiction to try that suit because it would be the case of a licensor & a licensee & the suit would have to be again transferred back to the High Court from the Small Causes Court. This is certainly not a thing which can ever be contemplated. The proper forum for the determination of the question whether the relationship between the pltf. & the deft. is as between landlord & tenant or as between licensor & licensee or as between owner &

trespasser is the High Court which initially has got the jurisdiction to entertain the suit for ejectment which has been properly framed on the basis of relationship as between licensor & licensee or owner & trespasser.

11. In my opinion the jurisdiction of the High Court to entertain & try suits of this nature, of course, up to the stage which I have indicated above, is not ousted by the enactment of Section 28 of Bombay Act (LVII [57] of 1947).

12. One difficulty which was felt by Gajendragadkar J. in the judgment just referred to was that if an owner of premises wanted to file a suit on the alternative contentions, namely, that of a licensor or licensee or that of a landlord or tenant, there would be a difficulty. With great respect to the learned Judge, that is not a difficulty which can ever arise. If a suit was to be filed on the basis of relationship as between licensor & licensee, it could not lie in the Small Causes Court at all. No such suit based on alternative contentions of this type could ever be entertained in the Small Causes Court, the Small Causes Court having jurisdiction only to entertain suits as between landlord & tenant which fell within the purview of Section 28 of Bombay Act (LVII [57] of 1947). If the pltf. was so wrongly advised as to file such a suit basing his claim for recovery of immoveable property on such alternative contentions, he would only have to thank himself. That is not a suit which can ever be entertained in the Court of Small Causes. He has to file a suit in the proper forum & the only way in which he can file a suit would be by having resort to the provisions of Section 28 of Bombay Act (LVII [57] of 1947). I see no difficulty whatever in conforming to the provisions of Section 19, Presidency Small Causes Court Act & Section 28 of Bombay Act (LVII [57] of 1947). There is no difficulty at all, & the difficulties which found favor with the learned Judge there were really imaginary.

13. I do not want to say anything more on this point of jurisdiction. In the main I agree with the reasoning which has been adopted by my Lord the Chief Justice in the judgment just delivered, & there is nothing more on this point which I can usefully add.