BOMBAY HIGH COURT

Shankar Raoji Patil

Vs.

Mahadu Govind Chawan

Special Civil Revision Application No. 983 of 1954

(M.C. Chagla, C.J. and Tendolkar, J.)

09.09.1954

JUDGMENT

M.C. Chagla, C.J.

1. Respondent No. 1 filed an application before the Mamlatdar contending that he had been dispossessed by his landlord, that the landlord had put the petitioners in possession, and as he was a protected tenant, he was entitled to an order restoring possession to him. The Mamlatdar held that the landlord had not dispossessed respondent No. 1 but he held on a plea taken by the petitioners that they were the sub-tenants of respondent No. 1 and therefore he dismissed respondent No. 1's application. Respondent No. 1 went in appeal to the Prant Officer. The Prant Officer upheld the finding of the Mamlatdar that the landlord had not dispossessed respondent No. 1, but he differed from the Mamlatdar with regard to the issue of sub-tenancy and held that the petitioners were not the sub-tenants of respondent No. 1 but they were trespassers and passed an order of possession in favour of respondent No. 1. The petitioners went in revision to the Ravenue Tribunal and the Revenue Tribunal has upheld the order of the Prant Officer and the petitioners have now come on a petition under Article 227 to us.

2. An interesting question has been raised and argued by Mr. Kulkarni before us and his contention is that on the finding of the Prant Officer that the petitioners were trespassers he had no jurisdiction to award possession to respondent No. 1 under Section 29(1) of the Tenancy Act. His contention is that once it is established that the party in possession is a trespasser, it is only a civil Court that can deprive the trespasser of his possession and give possession to the party claiming it against the trespasser.

3. Now, an important fact that must be borne in mind in this case is that it was the petitioners who put in issue the question as to whether they were the tenants of respondent No. 1 and it is clear that that issue can only be tried by the Mamlatdar under Section 70 of the Tenancy Act. It is

also to be borne in mind that respondent No. 1 went to the Mamlatdar claiming possession on the basis of his own title, and his title was that he was a protected tenant, and as such entitled to possession under the provisions of the Tenancy Act. Mr. Kulkarni does not dispute the position that the Mamlatdar had jurisdiction to try whether the petitioners were the tenants of respondent No. 1 or not. He also does not dispute the position that if the Mamlatdar came to the conclusion, as in this case he had, that the petitioners were the tenants, he had jurisdiction to dismiss respondent No. l's application. But the contention the puts forward is that if the Mamlatdar had come to a contrary conclusion and held that the petitioners were not sub-tenants, then his jurisdiction would have ceased and he would have no jurisdiction to grant any relief to the petitioners. Therefore, according to Mr. Kulkarni the Mamlatdar had only jurisdiction to dismiss respondent No. 1's application and uphold the contention of the petitioners but had no jurisdiction to grant any relief to respondent No. 1 and reject the contention put forward by the petitioners. Unless such a provision is clearly made in the Tenancy Act, we should be very reluctant to hold that a Court or a Tribunal has jurisdiction after entertaining an application only to grant a relief to one side and not to the other. As we shall presently point out the provisions of the Tenancy Act fortunately do not require that we should come to such a conclusion.

4. If it is open to the Mamlatdar to determine the question as to whether the petitioners were the tenants of respondent No. 1 or not, it must follow that impliedly he had jurisdiction also to decide that they were not sub-tenants and therefore were trespassers. That is the view I have taken sitting singly in a case reported in *Trimbak Sopana v. Gangaram*[1] and that view has been accepted by a judgment of a division bench reported in *Dhondi Tukaram v. Dadoo Piraji*[2]. But it is urged on the strength of the judgment in *Dhondi Tukaram v. Dadoo Piraji* that even though the Mamlatdar may impliedly hold that the petitioners are trespassers, he has no jurisdiction to grant a relief to respondent No. 1 and order possession against trespassers. The contention is that it is only when the tenant wants possession from his landlord that under Section 29(1) the Mamlatdar can pass an order for possession in his favour, but when the tenant is seeking possession against a trespasser, the Tenancy Act confers no jurisdiction upon the Mamlatdar to give him possession and the tenant must be relegated to his rights in a civil Court, and what is urged is that since the Prant Officer came to the conclusion that the petitioners were trespassers,, he should have directed respondent No. 1 to file a suit in a civil Court and not order possession. Now, the view taken by the division bench in *Dhondi Tukaram v. Dadoo Piraji* was that if a suit is filed by a landlord in a civil Court for possession and the defendant raises the contention that he is a tenant the issue must be decided by the Mamlatdar and the suit must be stayed. If the Mamlatdar holds that the defendant is a tenant, then the suit must be dismissed. If the Mamlatdar holds that the defendant is not a tenant but is a trespasser, then the civil Court must go on with the suit on the basis of the defendant being a trespasser. Now, one important fact must be borne in mind in considering the decision of the division bench, and that is that it was a suit filed by a landlord against a tenant and not by a tenant against a landlord. The case that we have here is not a case of a landlord seeking possession from his tenant but it is a case of a tenant who has been dispossessed and who wants his possession to be restored. Now, it is from this point of view that

one must look at the provision made in Section 29 with regard to the right of a tenant to obtain possession and the right of the landlord to obtain possession. Section 29(2) provides that a tenant entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar ; and Sub-section (2) of Section 29 provides that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. The distinction between the two sub-sections will immediately be

[1](1952) 55 Bom. L.R. 56

[2](1952) 55 Bom. L.R. 663

apparent. Whereas in the case of a landlord the Legislature has expressly provided that he can only obtain an order of possession in respect of a land held by his tenant, Sub-section (1) when dealing with a tenant does not impose any similar restriction. Construing the plain language used by the Legislature in Sub-section (1) it gives a right to the tenant to obtain an order of possession from the Mamlatdar in every case where he is entitled to possession under any of the provisions of the Tenancy Act, and the reason for this distinction is obviously based on principle. The Tenancy Act was put on the Statute Book for the protection of tenants and it would be difficult to believe that the Legislature intended that after a tenant had gone to the Mamlatdar for possession against a party who was in possession and the Mamlatdar had tried the issue as to whether that party was a sub-tenant or not the Mamlatdar should have no right to give relief to the tenant but should drive the tenant to a civil Court asking him to start a new litigation and then obtain possession by the rather dilatory method of a suit. The clear object of the Legislature in enacting Section 29(1) was that if the Mamlatdar was satisfied that the tenant was entitled to possession by reason of the Tenancy Act, then it was his duty to protect that possession and order any one who had dispossessed the tenant to restore possession to him.

5. Now, two cases may arise which may be different from the case that arises here, and to those cur observation may not apply. There may be a case where a tenant may make an application against a trespasser and the trespasser may not raise an issue with regard to his being a sub-tenant and therefore the Mamlatdar may not have to determine under Section 70 as to whether he is a tenant or not. It may then possibly be urged in such a case that as the application filed by a tenant was against a trespasser simpliciter the Mamlatdar had no jurisdiction to award possession to the tenant. It is unnecessary to express any opinion on a ease of that character. The other case that may arise may be that a tenant may make an application against a person who has ousted him from possession and may base his cause of action under the Specific Belief Act. In other words he may not claim possession on his title but he may require possession merely on the ground that he had been dispossessed within the period laid down in the Indian Limitation Act. Clearly such a case would not fall under Section 29(1) of the Tenancy Act because, Section 29(1) assumes that the tenant must claim possession on his title as a tenant and he must be entitled to possession as Section tenant under the provisions of the Tenancy Act. This case arose for my consideration in *Sona Gangu Ghadashi v. Ramu Govind Ghadishi*[3]. There a suit was filed under the Specific Relief Act and the only two issues that arose for the determination of the Court were "Whether the plaintiffs proved their possession within six months prior to the suit" and "Whether they

proved dispossession as alleged" and the learned Judge held that he had no jurisdiction to try the suit, and in my judgment I pointed out that neither of these two issues were triable by the Mamlatdar under the Tenancy Act and the civil Court had jurisdiction to try the suit. The application before us is perfectly clear and in this application respondent No. 1 has pleaded his title as a protected tenant and it is on the strength of that title that he wanted possession from the petitioners, and it is equally clear that the petitioners put in issue their own title as sub-tenants of the landlord or the tenants of respondent No. 1 and that issue was tried and determined by the Mamlatdar. Under those circumstances, in our opinion, there is no doubt that Section 29(1) is applicable and the tenant is entitled to obtain possession against the petitioners by an order of the Mamlatdar.

[3](1953) Civil Revision Application No. 1504 of 1951, decided by Chagla C.J., on January 8, 1953 (Unrep)

6. There is some discussion in the judgments below as to the powers of the Collector under Section 84 summarily to evict the petitioners. In our opinion it is unnecessary to consider what is the true interpretation of Section 84 because either the Mamlatdar has jurisdiction under Section 29(1) or he has not. The jurisdiction of the Collector to summarily evict a person under Section 84 can have no bearing on the jurisdiction of the Mamlatdar under Section 29(2). In our opinion, therefore, the Tribunal was right in the conclusion that it came to.

7. The result is that the petition fails and must be dismissed with costs.

Petition Dismissed.