

BOMBAY HIGH COURT

Ramkishore Pandit

Vs.

Vijayabhadursingh Jagtapsingh

A.F.O. No. 78 of 1963 with C.A. No. 755 of 1963. City Civil Court Bombay, in Civil Suit No. 3/36 of 1962

(Patel and Shah, JJ.)

09.04.1963

JUDGMENT

Patel, J.

1. This is an appeal from Order refusing to grant an injunction in favour of the plaintiff applicant. The short facts are that the defendant is an employee of the Century Mills Ltd., and as such employee he is in occupation of the room in dispute belonging to the Century Mills, in or about August of 1958, the defendant allowed the plaintiff to stay with him, as he says, to facilitate medical treatment or his ailing wife. The plaintiff, however, thereafter started asserting his sub-tenancy in respect of the room which jeopardized defendant's own tenancy with the Century Mills. The defendant thereupon commenced proceedings under Section 41 of the Presidency Small Cause Courts Act, in February 1960. The plaintiff filed his statement of defense on the 25th April 1960. On 7th August 1962, when the case reached hearing the parties obtained a consent order as follows :

"The defendant to vacate in four months. No order as to costs. The defendant will be at liberty to file a suit for declaration regarding his right of sub-tenancy in the suit premises within the above mentioned period of four months. After this consent order the plaintiff instituted a suit in the City Civil Court for a declaration that he was a sub-tenant of the suit premises and for an injunction restraining the defendant from executing the order obtained by him under Section 41 of the Presidency Small Cause courts Act. He also applied for a temporary injunction which the learned Judge refused to grant. The learned Judge while passing the order observed "There is no doubt whatsoever that the plaintiff is entitled to maintain this suit under the said section", presumably intending thereby to say that the plaintiff was entitled to maintain the suit in the City Civil Court but in view of the amended Section 47 of the presidency Small Cause courts Act 59 of 1953, which requires

that if a defendant in an application under Section 41 or the Presidency Small Cause Courts Act intends to file a suit, he shall inform the Court of the same and immediately proceed to file the suit before filing his Written Statement, the learned Judge held that in view of the inordinate delay in bringing the suit, the plaintiff had disentitled himself to the interim injunction. The plaintiff has now appeared to this Court.

2. AS the appeal involved an important question as to the jurisdiction of the City Civil Court to entertain a suit of this nature, it was referred by the learned Chief Justice to a Division Bench and has thus come before us for disposal.

3. The first question which arises is as to whether the City Civil Court had jurisdiction to entertain the suit filed by the plaintiff. We propose to consider this question first on first principles and the terms of the Acts involved, and refer to the authorities thereafter.

4. The scheme of the Presidency Small Cause Courts Act is to provide by Chapter VII summary procedure for expeditious recovery of possession of immovable property from a tenant or a licensee where the tenancy or the license is terminated Section 41 enables a party to make an application for recovery of possession in respect of property the annual rackrent of which does not exceed Rs. 2,000 either against a tenant or a licensee, Section 43 requires the Court to make an order for possession, if the defendant does not appear to show cause on the appointed day and the Court is satisfied that the plaintiff is entitled to make that application. The Explanation to that section provides that if the occupant proves that the title of the applicant by virtue of which he created the tenancy or the license had terminated previous to the date of the application, then he must be deemed to have shown sufficient cause within the meaning of the Act. Section 44 enables the plaintiff to hand over possession and gives indemnity to the judge or the officer for issuing the order and handing over of the possession. Section 45 saves the proceedings if they are vitiated on the ground of error but enables the occupant to obtain compensation for the trespass if by reason of the error in the proceedings he has suffered any damage. Section 46 defines the liability of an applicant who obtained an order under Section 41 though not entitled to do so and it says that he will not be protected by his obtaining possession it execution of that order. Section 47 need not be referred to as it applies to cases where the defendant wishes to file a suit during the pendency of the proceeding under Section 41. Section 49 saves the right of the occupant i.e. the defendant, to maintain a suit on title and says that recovery of the possession of any immovable property under that Chapter shall be no bar to the institution of a suit in the Bombay City Civil Court, or the High Court, as the case may be, for establishing his title to that property. The words Bombay City Civil Court were added by Bombay Act, XLIV of 1948" on the constitution of the City Civil Court in the city of Bombay.

5. If one has to consider the question of jurisdiction only on the basis of these provisions and the general law, then there could be no doubt that in the Presidency Town of Bombay such a suit assuming that a claim to tenancy is a title within the meaning of the word used there, would lie in the City Civil Court or in the High Court depending upon the value of the property. But then, this is not all. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has also to be

considered in that connection. This Act purported to create special Courts in the fond hope that disputes between landlords and tenants will be disposed of within the shortest of time. These hopes have, however, been belied by the inordinate delay that usually takes place particularly in the City of Bombay in disposal of suits relating to these disputes. Section 28 of this Act, so far as material, is as follows :

"(1) Notwithstanding anything contained in any law. . .

(a) In Greater Bombay, the court of Small causes. . . shall have Jurisdiction (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply, (2) and to decide any application made under this Act and (3) to deal with any claim or question arising out of the Act or any of its provisions and no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

This section in unequivocal language supersedes any other law enabling any other Court to try a suit or proceeding of the nature mentioned in that Sub-Section. The first requirement in order that the section should apply is that any or the provisions of that Part of the Act must be applicable to the premises in dispute; secondly, it must be a dispute between a landlord and a tenant; and thirdly, that the dispute must relate to the recovery of rent or to the recovery of possession of premises. It also enables the special Court to deal with any claim or question which arises out of the Act or any of its provisions and prevents any other Court from entertaining any such claim or question.

6. The section is intended to take away the jurisdiction of the regular Court and vest it in the special Court where a question between a landlord and tenant arises provided that the Act applies to the premises and the question relates to any of the matters enumerated i.e., to recovery of rent or possession or arises out of any of the provisions of the Act. It is also abundantly clear from the very nature of the provisions that even where the relationship of landlord and tenant is disputed, it will fall within the Act (See *Babulal Bhuramal v. Nandram Shivram*¹, Section 29A of the Act, saves only such suits as raise the question of title de hors the Act (vide Babulal's Case, 60 Bom LR 954 and not those which raise the question of relationship of landlord and tenant under the Act.

7. The present suit is founded on the ground that the plaintiff is a tenant of the premises, that he is ready and willing to pay the rent agreed upon between the parties and that the defendant is not entitled to possession and, therefore, not entitled to execute the decree which he has obtained in the Small Causes Court. The suit necessarily raises claims and questions under the Act and expressly relates to the recovery of possession by the landlord from the tenant in execution of the decree. The suit must clearly, therefore, fall within the jurisdiction of the special Court created under Section 28 of the Rent Act. The Presidency Small Cause Courts Act is a general Act while

the Rent Act is a special Act which deals with a special topic i.e., claims and questions between landlords and tenants. By the opening words "notwithstanding any other law to the contrary" in Section 28, the special provisions of Section 28 of the Act override those of Presidency Small Cause Courts Act pro tanto notwithstanding the fact that in Sections 47 and 48 of the latter Act the High Court and Bombay City Civil Court have been referred to in express words. These sections are procedural sections and the special Act is entitled to affect these sections even though the Presidency Small Cause Courts Act is a Central Act.

8. In connection with the subsequent addition of "City Civil Court" in Sections 47 and 49 we may reproduce below the following passage from what we had said in *Ranjit Patiraj v. Behram Sheriar Irani*²:-

"It may be argued here that originally in the Presidency Small Cause Courts Act, in Sections 47 and 49 the words were "in the High Court" and by Bombay Act 44

¹60 Bom LR 954

² Appeal from Order No. 42 of 1963, decided on 27th February 1963

of 1948 the Act was amended and the words "City Civil Court" were also added and this was after the Rent Act of 1947, was enacted and, therefore, the Rent Act must be deemed to be repealed or modified to the extent of inconsistency. This contention also cannot have validity. Even to such cases *generalia specialibus non derogant* applies. A general Act is to be construed as not repealing a particular one, that is, one directed towards a special object or a special class or objects; *Per Lord Hatherly Garnett v. Bradley*³, at p. 950. A general later law does not abrogate an earlier special one by mere implication (*Lancashire Asylums Board v. Manchester Corporation*⁴ Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislationthat earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular Intention to do so. (*Seward v. The Vera Crus*⁵, at p. 68, per Lord Selborne; Maxwell on Interpretation of Statutes, 9th Edn. page 183).

9. There can also be no validity in the argument that the Special Court will have no jurisdiction to grant injunctions. In the first place it is not a tribunal but a Court and has all the powers of a Court but its procedure is intended to be shortened. The power given to the court to decide and deal with all questions between landlord and tenant relating to recovery of rent or possession or those arising under the Act necessarily carries the ancillary powers for effectively implementing its decision. In *Importers and Manufacturers Ltd. v. Pheroze Framroze Taraporewala*⁶, it was held that the court acquires jurisdiction to deal with any claim or question arising out of any of the provisions of the Act. In *Mehersingh Sethi v. Khurshed Nadirshaw*, 56 Bom LR 540, it was held that the Court has power to decide all matters which are incidental or ancillary to the determination of the questions which it is entitled to decide. In *Remon v. City of London Real Property Co. Ltd*⁷, and in *Ingram v. Egerton*⁹, following the judgment of the Appeal Court in

*Clout v. London and Provincial Stores Ltd*⁸, County Court granted declaration and function under Section 17 of the English Rent Act. In our opinion, there can be no doubt with regard to the jurisdiction of the Special Court to grant an injunction and also make a declaration.

10. In *Govindram v. Dharampal*¹⁰, plaintiff filed a suit against the defendant for possession on the ground that the latter was a licensee and the licence was terminated. Chagla, C.J. said that "the questions 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 Act". But this can have no application when the plaintiff himself alleges that he is a tenant and the defendant is not entitled to possession and asks for an injunction. It has consistently been held that the defence that the plaintiff is a licensee is not relevant to the question of jurisdiction and, therefore, irrespective of whether the tenancy is admitted by the defendant or not, the Special Court under Section 28 will have jurisdiction. Even in *Govindram's* case, 53 Bom LR 386 the Court specifically observed that to make the decree in ejectment will depend upon the finding that the relationship between the plaintiff and the defendant is that of a licensor and a licensee. If the Court held that the relationship was that of landlord and tenant it must

³(1878) 3 AO 944

⁵(1884) 10 AC 59

⁷(1921) 1 KB 49

⁹(1949) 93 SJ 140

⁴(1900) 1 QB 458 at p. 471)

⁶1953 SCR 226

⁸(1926) 161 LJ News,

¹⁰53 Bom LR 386

decline jurisdiction. Mr. Justice Bhagwati agreed with the conclusion of the learned Chief Justice that the suit in that particular case lay in the High Court, adding that suits between a licensor and licensee could be entertained by the High Court notwithstanding the contention of the defendant that he was a tenant and that the jurisdiction would be lost only on a finding in his favour. This view was reaffirmed by a Division Bench consisting of Gokhale and V.S. Desai, JJ. in *Jaswantlal v. Western Company India*¹¹, These cases are not really relevant to the issues involved in the present case.

11. In *Madhavprasad v. Indirabai*¹², the plaintiff asked for a declaration that he was a sub-tenant and also asked for possession, and the learned Chief Justice expressed the view that the suit was substantially on title and the claim to possession was incidental. In 56 Bom LR 540, however, sitting with J.C. Shah, J. the learned Chief Justice said "the jurisdiction of the Special Court is not merely to try suits for recovery of rent or possession; but the jurisdiction is wider, because the Jurisdiction is to try suits relating to the recovery of rent or possession" thus giving due meaning to the words "relating to". With respect, it is impossible to say as was said in *Madhavprasad's* case, 55 Bom LR 21 that even though the plaintiff alleges tenancy and asks for possession or injunction if in possession, the case still does not fall within the ambit of Section 28 and the regular Courts would be competent to entertain and try the same. With respect, even the reliance on Section 29-A of the Rent Act which excludes suits on title was also (AIR 1958 Supreme Court 677). In 58 Bom LR 288 attar the landlord obtained a decree for eviction against his tenant the two plaintiffs claimed to be sub-tenants of the tenants and claimed to be entitled to possession and asked for injunction. The suit was filed in the City Civil Court. The Division Bench held that

the City Civil Court had no jurisdiction. In our opinion, this decision is directly contrary to the decision in 55 Bom LR 21 hereinabove referred to.

12. It is true that in *Abdul Kayum v. Ebrahim*¹³, a Division Bench has taken the view that the City Civil Court will have jurisdiction to decide a suit such as the present. Unfortunately, however, the Court does not seem to have been even referred to the language of Section 28, which in express terms bars the jurisdiction of the regular Courts in respect of such suits and enables the special Court only to deal with them. Ordinarily a tenant has on termination of the tenancy no right to remain on the property. In this case the sub-tenant claimed against the tenant that he was entitled to remain in possession. It was a suit between a tenant and landlord and related to possession. Whether the sub-tenancy was legal or illegal was an incidental question. The Court on a consideration of decided cases held that the City Civil Court had jurisdiction and apparently thought that Babulal's case, 60 Bom LR 954 did not affect the earlier authority. If the language of Section 28 of the Rent Act had been canvassed before the learned Judges it seems to us, they would probably have taken a different view. In view of the express language of Section 28, the decision of the Supreme Court in 60 Bom LR 954 and of the Division Bench of this Court in 58 Bom LR 288 (AIR 1955 Bombay 656) we are of the opinion that jurisdiction in such cases is vested only in the Special Court and that, therefore, the Bombay City Civil Court has no jurisdiction to entertain a suit of this nature.

¹¹61 Bom LR 1087

¹³61 Bom LR 1223

¹²55 Bom LR 21

13. Mr. Mundkar for the plaintiff requested us that we should restrain the execution of the decree for ejection in order to enable his client to take the plaint from the City Civil Court 2nd approach the Small Causes Court for an interim injunction. We do not see any reason to do so. Obviously, the room in question is only a single room Tenement and merely because the plaintiff is stronger of the two and made it necessary for the defendant to leave the premises it does not mean that he should be allowed to squat in the premises until the suit is decided. We have seen all the affidavits that are on file and we are of the view that no case is made out for granting time to the plaintiff to obtain such an injunction.

14. In the result, the appeal fails and is dismissed with costs.

15. As soon as the Judgment is received by the City Civil Court the matter be taken up and necessary orders be passed directing the return of the plaint for presentation to the proper Court.

16. In the Civil Application Rule is discharged with costs.
Appeal dismissed.