

BOMBAY HIGH COURT

Bombay Grain Dealers

Vs.

Lakhmichand VasANJI

(D.V. Patel and V.G. Wagle, JJ.)

13.08.1968

JUDGMENT

D.V. Patel, J.

1. This appeal is filed under clause 15 of the Letters Patent against the judgment of Mr. Justice Deshpande. The plaintiffs-respondent is a partnership firm. The trial Court had returned the plaint to the plaintiffs for presentation to the proper Court on the ground that it had no jurisdiction. The plaintiffs filed an appeal to this Court which was heard by Mr. Justice Deshpande. He allowed the appeal and held that the Court had jurisdiction in the matter. Against this judgment the defendants file the present appeal.

2. The question is one of construction of the provisions of the Bombay Rent Act and order to find whether the trial Court had jurisdiction or not in the matter, the nature of the plaintiffs' suit will have to be considered. The plaint consists of 12 paragraphs and the final paragraph contains the reliefs. Shortly stated the plaintiffs alleged that it is a monthly tenant of Room No. 10 on the first floor and the entire terrace on the second floor of the defendants' building known as "Grain Dealers Building" situated at 103, Keshavji Naik Road, Bombay-9. The plaintiffs have constructed a shed in the said terrace. On May 4, 1966 the defendants forcibly, unauthorizedly, illegally and high handedly, maliciously and with *mala fide* intention demolished and pulled down the eastern side parapet wall of the terrace. When this was objected to, the defendants and their representatives threatened to throw out the plaintiffs and their goods and by show of force prevented and restrained the plaintiffs from entering in to, possessing, using and occupying the terrace for the purpose of their business and for storing their goods. They also allege that on May 5, 1966, the employees of the defendants belaboured, assaulted, insulted and intimidated the partners and the servants of the plaintiffs-firm. Eventually a complaint in respect of this was lodged at the Dongri Police Station : that the defendants by force and show of force took the law into their own hands, committed breach of peace and prevented the plaintiffs from exercising their legal right to possess, use and occupy the terrace of which they are tenants of the defendants. In the relief clause they claimed (1) a declaration that the plaintiffs are entitled to the

possession and occupation of the terrace on the second floor as tenants, (2) that the defendants, their servants and agents be restrained from interfering with their possession and/or obstructing them in the quiet and peaceful possession and enjoyment of the said terrace, (3) that by a mandatory injunction they be directed to re-erect and reconstruct the demolished eastern side parapet wall of the terrace and to reinstate the same into its original condition. The rest of the prayers are not material.

3. The question is whether the present suit is governed by the provisions of Section 28 of the Bombay Rent Act. This question has been considered in a large number of cases and we will, therefore, refrain from reproducing the section in its entirety. It commences with the words "Notwithstanding anything contained in any law" and it purports to vest special jurisdiction in the Court named in clauses (a) and (b) of sub-section (1) in respect of matters enumerated by it. It gives jurisdiction to these Courts (1) to entertain (a) any suit or (b) proceeding, between a landlord and a tenant, (2) relating to the recovery of rent or possession of any premises to which the provisions apply, (3) to decide any application made under this Act and (4) to deal with (a) any claim or (b) question arising out of the Act or any of its provisions. There is a further clause which excludes the jurisdiction of any other Court in respect of any such (1) suit, (2) proceedings, (3) application or (4) deal with such claim or question.

4. A question of construction of this section came before a Full Bench of this Court in *Dattatraya Krishna v. Jairam Ganesh*¹. In this case the facts were these : The defendant was a tenant of the premises in suit. He rented the premises to the plaintiff at Rs. 20/- per month. The defendant was *trying to oust* the plaintiff from possession. The plaintiff therefore, filed a suit in the City Civil Court for a declaration that the defendant was a trespasser and that he should be ordered to quit and vacate the premises. The defendant raised the contention that the City Civil Court had no jurisdiction to entertain and decide the suit. The City Civil Court held that it had jurisdiction to proceed with the suit and on merits it dismissed the plaintiff's suit. The plaintiff then filed an appeal in the High Court which was referred to the Full Bench. Two other appeals from orders were also referred to the Full Bench. They were 166 of 1963 and 170 of 1963. In Appeal from Order No. 170 of 1963 the defendant had filed an application under Section 41 of the Small Cause Courts Act against the plaintiff on the ground that the plaintiff was a licensee and that his license was terminated and he was therefore, entitled to the possession. This application succeeded and the Small Cause Court passed an order of eviction against the plaintiff. The plaintiff then raised a suit in the City Civil Court for a declaration that he was a lawful tenant of the defendant and prayed for an injunction restraining the defendant from obtaining possession in execution of the order passed under Section 41 of the said Act. He alleged that the defendant was in the position of a trespasser. The defendant challenged the jurisdiction of the Court to decide this suit in view of Section 28 of the Rent Act. The trial Court directed the plaint to be returned to the plaintiff for presentation to the proper Court. The appeal was against the judgment. In Appeal No. 166 of 1963 the facts were slightly different but somewhat of a similar nature. The defendants were the tenants of the premises in suit. They had given the premises to the plaintiff,

according to them, on leave and license. They filed an application under Section 41 of the Small Cause Court Act against the plaintiff on the ground that his license was terminated. The Small Cause Court made an order for possession against the plaintiff. The plaintiff then filed the suit in the City Civil Court and contended that he was a lawful sub-tenant to the defendants and that the order for eviction obtained by the defendants amounted to an Act of trespass. He asked for a declaration of his title as a sub-tenant and an injunction restraining the defendants from executing the said order.

¹(1964)66 Bom. L.R. 645 (FB)

5. It is clear on the facts of these three cases that in the first case the plaintiff claimed an injunction against his immediate landlord who was trying to oust the plaintiff. In the two cases the plaintiffs claimed injunctions against their immediate landlords who were attempting to execute the order passed by the Small Cause Court, under Section 41 of the Presidency Small Cause Courts Act. In each of the cases the respective plaintiffs claimed a decree of declaration of his title as a tenant and an injunction restraining the landlord from either forcibly evicting him or executing the order of eviction. The judgment of the Full Bench was delivered by the learned Chief Justice where the ambit of the first part of the section was carefully considered. The learned Chief Justice says (p. 671) :

"The words used are 'relating to recovery of rent or possession' and not 'for recovery of rent or possession'. The words 'relating to' are very wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises. Even if, therefore, the suit is not for possession, if the relief claimed in the suit is in regard to or in respect of recovery of possession, it will come within the ambit of this section. Thus a suit, in which the plaintiff seeks to get rid of an order of his eviction restraining the defendant from interfering with his possession, will also be covered by this section."

In answer to a contention that there may be cases where a relief in respect of a contractual tenancy is claimed by the plaintiff and such a suit would not be covered by the provisions of Section 28 of the Rent Act because no claim or question arises under the Act or any of its provisions, the learned Chief Justice said (p. 672) :

".....We have given our anxious consideration to these arguments but we do not think that we can uphold them. Section 28 refers to any suit or proceeding between a landlord and a tenant relating to recovery of possession of any premises to which any of the provisions of Part II apply. These words are wide enough to include every suit between a landlord and a tenant, whether the tenancy is contractual or is continued by reason of the provisions of the Act, provided the relief asked for relates to possession. There is nothing in this section or in any other section of the Rent Act which would justify cutting down the scope of Section 28 or holding that suits on contract were intended to be excluded from the purview of this section."

In answer to a contention that in a suit on contract no relief is claimed under the Rent Act and the rights are *de hors* the Act and therefore, the decision in each a suit would not operate as a bar to a suit under Section 29-A, the learned Chief Justice having regard to the decision of the Supreme Court says (p. 675) :

"A tenant or a sub-tenant who claims his rights under the contract with his landlord is also a tenant within the meaning of the Act. His landlord is also a landlord within the meaning of the Act. The dispute between them in regard to possession must also be decided in conformity with the provisions of the Act. Even in a suit brought by a tenant on the basis of his contract, the matters which will be directly and substantially in issue will be : (1) whether the plaintiff is a tenant and whether the suit is between a tenant and the landlord as alleged, and (2) whether the plaintiff is entitled to relief in regard to possession."

7. The learned Judge has distinguished the Full Bench decision essentially on two grounds : firstly he says that this is a suit for injunction and secondly that the suit in the present case is not relating to recovery of possession though it may be a suit relating to possession. We will deal with the second distinction first. In support of this distinction, reliance has been placed on a judgment of Mr. Justice Chandrachud in *Bishan v. Maharashtra W. & G. Co^l.*, In order to appreciate some of the observations of the learned Judge, it is necessary to know the facts of that case. There were three plaintiffs in the suit. The plaintiffs occupied three shops on the periphery of a compound belonging to the Kohinoor Cinema. The approach of one shop abutted on the public road and the two other shops abutted on a gully or a passage leading to the Kohinoor Cinema. The plaintiffs were the tenants of the three shops while the passage was the common passage for the landlords, the plaintiffs and possibly other tenants. It appears from the judgment that defendant No. 3 was the present owner of the theatre and defendants Nos. 5 and 6 were the lessee of the Cinema house. Defendant No. 1 was their Manager. It appears that the situation of the Booking Office of the Cinema was altered with the result that the queues formed by the buyers of the tickets came right upto the entrance to the gully and it was the plaintiffs' case that the right of access to their shops was obstructed, Evidently on these facts, if the decision of the Full Bench had to be applied, the case could not fall within the ambit of Section 28 of the Rent Act. The landlord or the owner i.e defendant No. 3 was merely a formal party. The real persons who had altered the situation of the Booking Office were defendant Nos. 1, 5 and 6. Again they were not directly or indirectly attempting to obstruct the plaintiffs in their entering in their premises with a view to deprive them of the possession of the premises of which they were actually the tenants. What was alleged was that when the queues were formed, there was some obstruction in the passage. In short, it was really a case of a nuisance. While dealing with this case the learned Judge observed that there was a distinction between the words "relating to the recovery of possession" and "relating to possession". It appears that it was contended before the learned Judge that the Full Bench decided that in order that a suit should be covered by Section 28, it should be a suit in relation to possession. It was said that no distinction was made by the Court between suits "in relation to possession" and "suit in relation to recovery of possession".

Apparently this contention found some favour with the learned Judge.

8. However, on a careful reading of the judgment of the Full Bench, it is not possible to hold that the Court was not dealing with the meaning of the words "relating to recovery of possession". We have already reproduced what was said by the learned Chief Justice. It is true that while referring to the suit, relating to recovery of possession, the learned Chief Justice observed that suits relating to possession were governed by the provisions of Section 28. The learned Chief Justice meant that in order that a suit should fall within Section 28, it must have *direct connection* with the question of possession of the premises rented or alleged to be rented for he says "words 'relating to' are very wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises....." See the first passage cited by us from Page 671. In the case before Mr. Justice Chandrachud obviously no attempt was made to disturb the tenancy rights or the possession of the premises of which the plaintiffs were the actual tenants. As we have pointed out, it was merely on the ground of nuisance on the common passage that the suit was founded. While dealing with this case, the learned

¹(1966)69 Bom. LR 229

Judge points out emphatically this aspect of the matter. He says (p. 236) :

"None of these reliefs strikes me as a back door method to obtain possession of any part of the premises included or alleged to be included in the lease of the plaintiffs. If these reliefs are considered in the context of the plaint as a whole, it would be clear that though the suit is between a landlord and tenant, it neither relates to recovery of possession nor does it raise a claim or question arising out of the Act or any of its provisions."

The learned Judge after referring to certain paragraphs of the plaint says (p. 234) :

"These averments in the plaint and the particular reliefs which I have set out above leave no doubt that the plaintiffs are not attempting directly or indirectly to secure or obtain the possession of the passage but that they want an order preventing in the passage in a manner which will obstruct the access to the shops."

It appears that the reference to the word "passage" is some mistake. If one has regard to the language of Section 28 the kinds of suits and proceedings that are referred to in Section 28 must directly relate to the recovery of premises which are governed by the provisions of the Rent Act. It is clear that the possession of the premises in that case which in occupation of the plaintiffs was not in any manner attempted to be interfered with. It is in the light of these facts that the observations of the learned Judge must be read and applied.

9. Now, when it is said that in order that a suit must fall within the jurisdiction of the Small Cause Court, it must relate under the first part of the section to recovery of possession, which are those suits ? If a person is seeking to prevent the obtaining of possession by the landlord, it could be

said that it relates the obtaining of possession of the premises and it also relates to recovery of possession of the same. In each of these cases what the landlord is doing or attempting to do is to recover possession from the tenant. It may be that in one case the landlord may be attempting to recover possession by obtaining an order of a Court which is not final; in another case it may be that he is trying to recover possession in an illegal manner by force. Nonetheless, what the landlord is attempting is to recover possession. If the plaintiff comes to Court and says 'This is what the landlord is doing. You prevent him from doing so'. Certainly the suit is one which relates to the recovery of possession. There may be a case where the landlord is not doing anything of the sort in relation to the actual possession of the premises of which the plaintiff is the tenant. In such a case what the landlord is doing or attempting to do is to cause a nuisance to the tenant which prevents him from enjoying his property in the same manner as before. In a very remote way it might possibly be suggested that it relates to possession in the sense that to some extent what the landlord is doing is connected with the plaintiff's possession of the tenanted premises. That, however, does not bring the suit within the ambit of the Act, because what the landlord is doing has not the direct connection with possession of the tenanted premises, which is necessary to bring the case within Section 28 of the Act.

10. The question then is whether the plaintiff's allegations in the plaint are covered by what we have stated above. This must bring us directly to the averments made in the plaint. It may be said that para 3 is the historical material that is furnished by the plaintiffs for the finding of the suit. The real averments are contained in paras 4 and 5. There the plaintiffs alleged that the landlords forcibly entered the terrace let out to the plaintiffs, illegally and high-handedly pulled down the eastern side parapet wall of the terrace, prevented and restrained the plaintiffs from entering into possession and using and occupying the said terrace for the purpose of their business and for storing their goods. In para 5 they alleged that by show of force the defendants took the law into their own hands and committed breach of peace and assault upon the plaintiffs and their agents who were exercising their legal right to possess, use and occupy the said terrace of which they were the tenants. In para 6 they say "the plaintiffs, their servants, agents and representatives are entitled to possess, use and occupy the said terrace as the tenants". They further say that the defendants committed trespass wrongfully, illegally and high handedly and they continued to threaten the plaintiffs in case they tried to exercise their rights. They say : "The plaintiffs therefore, submit that the defendants, their servants agents and representatives should be perpetually and permanently restrained by an order and injunction of this Honourable Court from entering upon or into the said terrace or any part thereof etc." In para 8 the plaintiffs alleged that by reason of the demolition and pulling down in the eastern side parapet wall of terrace the plaintiffs "are and will continue to prevented from using and occupying the said terrace for the purpose of their business and for storing their goods and article lying in the terrace." After asking all these averments the plaintiffs asked for the relief which we have already reproduced. Clearly the landlords have ousted the plaintiffs from the premises of which they allege to be tenants, and they want the possession back form the defendants. The reliefs are cast in the form of injunction which has somehow become current in our City Civil Court. Whatever may be form of the relief

asked for, the Court must consider its substance. In reality it is a suit for getting possession from defendants and it falls within Section 28. The learned Judge seems to be of the view that the question as to whether the plaintiffs were tenants of the terrace was not in dispute. He refers in his judgment to para 7 of the written statement and says that the defendants substantially admitted what was stated by the plaintiffs in para 3 of the plaint. It appears that there was a mistake in making a copy of the written statement. In para 7 of the written statement the allegations which the defendants admit are not those contained in para 3 of the plaint, but in para 2 of the plaint. So far as the allegations of the plaintiffs in para 3 of the plaint that they were the tenants of the terrace are concerned, the defendants in para 8 specifically denied that the plaintiffs were the tenants of the said terrace. They contended that they were mere licensees and they were paying daily licence fees for going to the terrace and using it. This observation of the learned Judge apparently appears to be one of the foundations of the judgment. Having regard to the real purport of paras 7 and 8 it is clear that there is some misapprehension in this matter as regards the admissions of the defendants. That however ought not to make any difference for it is settled that in order that a suit should fall within Section 28, the tenancy need not be admitted. Once we come to the conclusion that the question is one as to whether the relationship between the plaintiff and the defendant is that of tenant and landlord, and that the suit directly relates to recovery of possession by the defendant, clearly the jurisdiction to the City Civil Court is barred, whether or not the tenancy is admitted.

11. One argument which appealed to the learned Judge is that the title of plaintiffs to possession in the present case is *de horse* the provisions of the Bombay Rent Act. The observations of the Full Bench which we have quoted above clearly indicate that it is not necessary that the right must clearly be created by the Rent Act, where the dispute relates to recovery of possession by the landlord. the plaintiffs alleged that they were tenants of the premises. Section 12 of the Rent Act prevents a landlord from obtaining possession of the rented premises so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases otherwise than under the provisions of Sections 12 and 13 of the Act. Whether the landlord is trying to recover possession by an order of a Court which is not conclusive or illegally by force cannot effect the question. The suit is one which relates to recovery of possession by the landlord.

12. The learned Judge has observed that essentially the present suit is one for injunction and the question of tenancy arises incidentally because it is the plaintiffs' case that they are in lawful occupation of the premises which were let out to them more than 20 years ago. We have already referred to this aspect of the matter. While saying so, the learned Judge has not, with respect, referred to paras 4, 5 and 8 of the plaint which would clearly indicate that what was sought to be prevented was the attempt of the defendants to recover possession of the premises illegally. not only that, in para 8 there is a specific averment that the demolition of the eastern side parapet wall of the terrace prevented the plaintiffs from occupying and using the premise for their purposes of the business. What the plaintiffs in effect want is that the wall should be re-built and that they should be put in possession by preventing the landlord from entering the premises after

rebuilding the eastern side parapet wall. We may again refer to the Full Bench decision which has said that once a suit or a proceeding falls within the jurisdiction of a Court and Court is entitled to make such consequential orders as are necessary for the effective enforcement of the rights declared or given by it. It was on this principle that the Full Bench held that even though under the Rent Restriction Act the relief to an injunction is not referred to anywhere the Court would have jurisdiction to grant injunction in proper cases where the suit fell within its jurisdiction, and at least in the appeals before it injunctions were asked for. Evidently, therefore, the mere fact that the suit is for injunction will not take the case out of the jurisdiction of the special Court if the other conditions of the exercise of jurisdiction are satisfied. In the result, with respect, we disagree with the order made by the learned Judge, we set aside the said order and restore that made by the learned trial Judge with costs to the defendants in this Court and before the learned Single Judge. The injunction so far granted will continue until Sunday, August 18, 1968 by which time the plaintiffs should obtain such orders as they choose from the Small Cause Court. Appeal allowed.