



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5177 OF 1996

Chogalal Santokhji Raval

...Petitioner

V/s.

Sjamkarprasad Jagnath Varma

...Respondent

Mr. N.V. Vechalekar *for the Petitioner.*

Mr. A.K. Singh *with Mr. Piyush Singh i/b. M/s. Singh Associates for Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 September 2024.

Oral judgment :

1) This Petition is filed challenging judgment and order dated 5 July 1996 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 396 of 1990 filed by Petitioner and confirming the decree dated 17 August 1990 passed by the learned Judge of the Small causes Court decreeing L.E. & C. Suit No.320/431 of 1981 and directing Petitioner/Defendant to handover possession of the suit premises to Plaintiff.

2) Plaintiff instituted L.E. & C. Suit No.320/431 of 1981 against Petitioner/Defendant contending that Leave and License Agreement dated 1 March 1972 was executed, by virtue of which,

Plaintiff put Defendant in possession of the suit premises being a Shop, more particularly described in paragraph 1 of the plaint (**suit premises**). Plaintiff himself claims to be a tenant in respect of the suit shop and granted the same to the Defendant by way of Leave and License Agreement dated 1 March 1972 for a tenure of 11 months. The tenure of the Leave and License Agreement expired on 31 January 1973, but Defendant failed to handover possession of the suit premises to Plaintiff. It was also alleged that Defendant had failed to pay the agreed compensation of Rs. 115 per month from October 1972. Plaintiff accordingly served notice dated 16 August 1973 to him demanding possession of the suit premises. The notice was replied by Defendant on 25 August 1973. On this broad contentions, L.E. & C. Suit No.320/431 of 1981 was filed by Plaintiff seeking recovery of possession of the suit premises from Defendant. On receiving suit summons, Defendant appeared in the Suit and filed written statement contending the land in question is owned by Government of India, Ministry of Railways and Plaintiff did not have *locus standi* to file the Suit. It was further pleaded that one Aminabai Fatehmohamed Kazi, the original landlady, had already terminated Plaintiff's tenancy in respect of the suit premises and a suit for Plaintiff's ejectment was pending before the Small Causes Court. It was further pleaded that Defendant was put in exclusive possession of the suit premises by virtue of this agreement dated 1 March 1972 and Defendant had never agreed to vacate the suit premises on 31 January 1973 as alleged. It was further contended by the Defendant that as on 1 February 1973, he was in exclusive possession of the suit premises and accordingly attained the status of protected tenant under Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**The Bombay Rent Act**). The Defendant

prayed for dismissal of the Suit. Both parties led evidence in respect of their respective claims. After considering the pleadings, oral and documentary evidence, the Trial Court proceeded to decree the Suit on 17 August 1990 holding that the tenure of the license had expired and that Defendant was not occupying the suit premises as on 31 January 1973 through any valid and subsisting license. The Trial Court accordingly directed that the Plaintiff is entitled to recover possession from Defendant with further order for conduct of enquiry into the mesne profit under Order XX Rule 12 of the Code of Civil Procedure, 1908.

3) Defendant filed Appeal No. 396 of 1990 before the Appellate Bench of the Small Causes Court challenging the decree dated 17 August 1990. The Appeal however came to be dismissed by the Appellate Bench by judgment and order dated 5 July 1996, which is the subject matter of challenge in the present petition.

4) The Petition came to be admitted by order dated 14 February 1997 granting interim stay to the eviction decree. It appears that on account of failure on the part of the Petitioner-Defendant to deposit the license fees after August-2011, the interim order stood vacated. On 2 November 2017, the Petition was dismissed for non-prosecution once again vacating the interim order. It appears that the Respondent-Plaintiff took out execution proceedings and warrant of possession was issued on 8 February 2018. Civil Application No.466 of 2018 was filed for restoration of the Petition and for restoration of the interim order. This Court passed order dated 6 March 2018 deferring hearing of the said application to enable the Respondent-Plaintiff to secure possession of the suit premises. Respondent-Plaintiff was however restrained from creating any third-party interest in respect of

the suit premises. It appears that respondent-Plaintiff has accordingly secured possession of the suit premises. The Petition was restored by order dated 2 July 2018 passed in Civil Application No.466 of 2018. It appears that original Petitioner /Defendant passed away during pendency of the Petition and accordingly his legal heirs have been brought on record from time to time, who are prosecuting the Petition. The Petition is called out for final hearing today.

5) I have heard Mr. Vechalekar, the learned counsel appearing for Petitioner, who would submit that the Suit filed by Plaintiff under Section 41 of the Presidency Small Causes Court Act, 1888 was not maintainable as Petitioner/Defendant is not a licensee in respect of the suit premises. That Petitioner-Defendant attained the status of protected tenant and therefore the Suit was not maintainable. He would rely on Section 15A of the Bombay Rent Act in support of his contention that Defendant acquired the status of protected tenant on account of his valid status of occupying suit premises as a licensee. He would submit that there is nothing on record to indicate termination of license prior to 1 February 1973. Mr. Vechalekar, would further submit that Plaintiff is not the owner in respect of the suit premises. That the land in question is owned by Indian Railways. Even if the claim of Plaintiff about tenancy is to be accepted, his tenancy got terminated and landlady had filed suit against him for eviction. In such circumstances, Plaintiff does not have authority to file a suit seeking recovery of possession of suit premises. He would submit that Indian Railways have already initiated action under provisions of Sub Section 2 of Section 5A of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (**Public Premises Act**) seeking eviction of Petitioner /Defendant.

That in such circumstances Suit filed by Plaintiff, who had no locus to seek possession of the suit premises from Defendant, was clearly not maintainable. Mr. Vechalekar would accordingly pray for setting aside decree passed by the Trial Court and the Appellate Court.

6) Petition is opposed by Mr. Singh, the learned counsel appearing for the Respondent -Plaintiff. He would submit that both the Courts below have passed concurrent decrees against Defendant after considering the entire pleadings and evidence on record. That in absence of any patent error in such concurrent findings, this Court would be loathed in exercising writ jurisdiction. That Petitioner has not been able to point out any palpable error in the view taken by Trial Court about non-subsistence of valid license as on 1 February 1973. He would submit that licensee remaining in possession of the suit premises after expiry of license is not covered by Section 15A of the Bombay Rent Act. That therefore Petitioner/Defendant has not acquired the status of a protected tenant and small causes Court has rightly passed decree for his eviction. He would submit that in any case the Plaintiff/Respondent has secured possession of the suit premises. He would pray for dismissal of the Petition.

7) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is clear that Defendant's entry into the suit premises is clearly through the license executed between the parties on 1 March 1972. Defendant did not dispute execution of the license agreement. The tenure of the license was only for 11 months and it expired on 31 January 1973. It is an admitted position that after 31 January 1973, the license was not renewed between the parties. It however appears that despite expiry of license

on 31 January 1973, Defendant continued to remain in possession of the suit premises and now claims benefit under Section 15A of the Bombay Rent Act. Section 15A of the Bombay Rent Act provides for certain licensees in occupation as on 1 February 1973 to be protected as tenants and provides as under:

‘15A. Certain licensees in occupation on 1st February 1973 to become tenants

(1)Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

2. The provisions of sub-section (1) shall not affect in any manner the operation of sub-section(1) of section 15 after the date aforesaid.

8) Thus, for claiming status of tenant under Section 15A of the Bombay Rent Act, it becomes necessary for person remaining in possession of the premises as on 1 February 1973 to demonstrate that his occupation was in capacity as licensee. Thus, every occupant of premises as on 1 February 1973 is not conferred the status of a tenant under Section 15A of the Bombay Rent Act. A trespasser cannot be come under the purview of Section 15A of the Bombay Rent Act. Similarly, a person remaining in unlawful possession as on 1 February 1973 can also not become a tenant. Subsistence of valid license as on 1 February 1973 is a *sine qua non* for recognition of occupation as a tenant under provision of Section 15A. This is the broad statutory scheme under which legislature has extended special protection to the licensees remaining in possession of the premises as on 1 February 1973 by converting them into protected tenants. In the facts of the present case, the license had expired on 31 January 1973

and the same was thus not valid as on 1 February 1973. It appears that Defendant had stopped paying license fees to the Plaintiff since October -1972. This is not a case where there was an implied arrangement between the parties for continuation of license beyond 1 February 1973. This is not a case where Defendant went on paying license fees in respect of the suit premises to Plaintiff after expiry of the license or that Plaintiff continued to accept the same.

9) In my view, therefore, the license expired with efflux of time on 31 January 1973 and position of Defendant in respect of the suit premises became unlawful after 1 February 1973. It therefore cannot be stated that Defendant remained in possession of the suit premises by virtue of any valid subsisting license as on 1 February 1973. Defendant therefore cannot strictly claim protection under Section 15A of the Bombay Rent Act. This position has rightly been appreciated by the Trial Court.

10) Mr. Vechalekar would submit that Plaintiff did not have authority for suit for ejectment against Defendant. The said contention is premised on the assertion that Plaintiff is not the owner of the land and the real owner is Indian Railways. It is further sought to be considered that even the status of Plaintiff as tenant got terminated by the landlady and that therefore he did not have any authority in law to institute ejectment Suit against Defendant in the year 1991. I am unable to agree. Under the provisions of Section 116 of the Indian Evidence Act, 1872, tenants and licensees in possession are estopped from challenging title of the landlord. Section 116 of the Evidence Act provides thus:

116. Estoppel of tenants and of licensee of person in possession.

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

11) Thus, Section 116 of the Evidence Act would clearly estop the Defendant from questioning the title of the licensor/Plaintiff since his entry into the suit premises was secured by admitting the right of Plaintiff/licensor to grant such license. Statutory scheme is that a tenant or licensee, who acknowledges the right of landlord /licensor while granting tenancy/license cannot subsequently take a volte face and question the title of such landlord/licensor when possession of the suit premises is sought. The law thus prevents a party from seeking entry into premises by recognizing the title and then turn around at the time of eviction proceedings and raise question of title. The statutory scheme is such that tenant or licensee needs to first hand back possession of the premises to the landlord/licensor and thereafter file independent proceedings claiming right to occupy the premises independent of the tenancy agreement /license. In the present case as well, Defendant, who secured entry into the suit premises by recognising right of Plaintiff/Licensor to grant license, would stand estopped from questioning his title in an ejectment suit.

12) So far as the proceedings initiated by Indian Railways under the provisions of Public Premises Act against the Petitioner are concerned, in my view the same would have absolutely no relevance to the right of the licensor to seek recovery of possession of the premises. The eviction proceedings are initiated by Railways possibly after

noticing that Petitioner was occupying the premises on account of interim orders passed by the Appellate Bench or by this Court. In my view, initiation of proceedings by Railways under Public Premises Act are absolutely irrelevant to the issue involved in the present Petition.

13) It is also a matter of fact that, Petitioner has lost possession of the suit premises on account of execution of decree by the Plaintiff.

14) After considering the overall conspectus of the case, in my view, no palpable error is committed by the Small Causes Court or Appellate Court in decreeing the Suit. Writ Petition is devoid of merits and is accordingly dismissed. Rule is discharged.

[SANDEEP V. MARNE, J.]