Bhagwan Vishwanath Phadnis And Ors. vs Bhasker Digamber Choudhary on 29 July, 1977

Equivalent citations: AIR1977SC2183, (1977)4SCC374, 1977(9)UJ502(SC), AIR 1977 SUPREME COURT 2183, 1977 4 SCC 374, 1977 (2) RENCJ 544, 1977 (2) RENTLR 444, 1977 U J (SC) 502

Author: Y.V. Chandrachud

Bench: P.S. Kailasam, Y.V. Chandrachud

JUDGMENT

Y.V. Chandrachud, J.

1. The appellants are owners of a house situated at 1204/23, Shivaji Nagar, Poona. They filed a suit against the respondent for possession of a block of three rooms and a verandah let out to him as a monthly tenant. After considering the requirements of the appellants and on consideration of the question of comparative hardship to the parties, the Trial Court passed a decree for possession in favour of the appellants. That decree was confirmed in appeal by the learned Joint Judge, Poona whereupon the respondent filed a petition in the High Court under Article 227 of the Constitution. By a judgment dated February 12, 1976 the High Court allowed that petition, set aside the judgment of the Joint Judge and remanded the appeal to him for a decision in the light of the observations contained in its judgments. This appeal by special leave is directed against the judgment of the High Court.

2. Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 provides, in so far as is material, that a landlord shall be entitled to recover possession of any premises from his tenant, if they are reasonably and bona fide required by him for his own occupation or for the occupation of any person for whose benefit the premises are held. But, by Sub-section (2) of Section 13, a decree for eviction cannot be passed on this ground if the Court is satisfied that greater hardship would be caused by passing the decree than by refusing to pass it. The question of comparative hardship arising under Sub-section (2) was considered both by the Trial Court and the First Appellate Court, which took the view that not only did the appellants require the suit premises for their personal use and occupation but that greater hardship would be caused to them if a decree for possession were not passed in their favour. The learned Joint Judge disposed of the question of hardship by observing that the 2nd appellant for whose personal use the premises were required and the respondent were "placed in almost identical circumstances", meaning thereby that the issue of hardship was evenly balanced, but he concluded that the fact that the 2nd appellant was one of the owners "tilts the balance" in favour of the appellants.

3. We are unable to appreciate, after considering everything that the learned Judge of the High Court has said in his elaborate judgment, that it was necessary to set aside the entire judgment of the Joint Judge and reopen the appeal before him. The two courts of fact had concurrently recorded the finding that the landlords require the suit premises for the personal use and occupation of one of them and that the balance of convenience was in their favour. It must be mentioned that the learned Joint Judge did not deal with the question of hardship by merely resorting to the tilting of the scales, though even that course may in conceivable cases be permissible. He examined the evidence carefully and held in favour of the landlords because the respondent had retired from the Government service on a salary of Rs. 1,800/-p m., that he drew a pension of over Rs. 500/-, that his daughters were married, his elder son had set up medical practice at Jalgaon, the younger one was taking education at Pawai, that no reliable evidence was produced to bear out the respondent's assertion that it was necessary for him to live in Poona as the climate there suited his wife's ailment of rheumatism and that with the means at his disposal, the respondent could find alternate accommodation in Poona.

4. If the High Court 'felt that there was any particular issue which ought to have been considered by the Joint Judge but was not considered by him, a finding could have been called for on that question or the order of remand could have been limited to that question. That is what we propose to do, for the reasons which we will immediately proceed to mention.

5. While the appeal against the judgment of the Trial Court was pending before the learned Joint Judge, the respondent filed an application on September 6, 1975 agreeing to hand over possession of one of the three rooms in his occupation to the appellants. The appellants being already in possession of a hall on the first floor of the building for their common use, the respondent's offer was calculated to show that if the landlords were given possession of one more room, the need of the 2nd appellant, in regard to which the suit was filed, would be satisfied. Unfortunately, the Joint Judge overlooked that application and did not pass any orders thereon. What we now propose to do is to direct him to consider the application and determine (i) whether the suit premises can be conveniently split up and (ii) whether the offer made by the respondent can adequately meet the needs of the 2nd appellant. If the premises cannot be conveniently split up, no further question will arise and the suit must succeed. It is only if they can be so split up that the 2nd question shall have to be decided.

6. We, therefore, allow this appeal and set aside the judgment of the High Court. We, however, confirm the order of remand but modify its operation by limiting it to a consideration of the two questions set out in the preceding paragraph of our judgment. The findings already recorded by the Trial Court and the Joint Judge on all other questions will stand and the appeal shall be disposed of in the light of the finding that the Joint Judge will record on the two issues remanded to him. The learned Judge may give liberty to the parties to adduce evidence on those issues. There will be no order as to costs.