

Supreme Court of India

Shrinavas Kasherlal Palid vs Vithal Shivagir Gosavi on 18 November, 1993

Equivalent citations: 1994 SCC, Supl. (2) 212

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

SHRINAVAS KASHERLAL PALID

Vs.

RESPONDENT:

VITHAL SHIVAGIR GOSAVI

DATE OF JUDGMENT 18/11/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

RAY, G.N. (J)

CITATION:

1994 SCC Supl. (2) 212

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Special leave granted.

2. The appellant claims to be the tenant of the respondents. In 1946, an extent of 16 acres and 5 guntas of land in Village Pimpal Gaon, District Nasik was leased out to the appellant for non-agricultural purposes, viz., for storing onions on the basis of yearly rent. In the lease deed there was a condition that it could be renewed. The landlord filed a regular suit for eviction on certain grounds including on the ground of change of user. An objection was taken before the trial court that the Bombay Rent Act, 1947 is attracted and the civil court had no jurisdiction to try the suit. The learned Civil Judge framed the necessary issues on the basis of the plaint and the written statement and one of the issues is whether the provisions of Bombay Rent Act are applicable to the suit. The learned Judge answered the issue in favour of the defendant and also gave his conclusions on certain other issues and dismissed the suit. Aggrieved by the same, the respondent-plaintiffs filed an

appeal in the appellate court, viz., before the Additional District Judge, Nasik. The appellate court agreed with the trial court that the provisions of Bombay Rent Act were attracted. But held that plaintiff has come out with a specific case and the defendant claims that suit ought to have been filed in the rent court and when once the suit is filed in regular court and when the same court has jurisdiction to try the suit under the rent act also, the court can proceed to decide the suit as if one filed under the Bombay Rent Act. Having taken this view, the appellate court proceeded to consider whether the Suit could be decreed in favour of the plaintiffs. Having noted that the defendants had admitted the change of user, the appellate court decreed the suit and ordered eviction. It may be mentioned herein that it was vehemently contended before the appellate court on behalf of the defendants that the landlord was aware of the change of user and for a number of years he received the rent in spite of being aware of change of the user and, therefore, the principle of acquiescence comes into play and on that basis the suit should be dismissed. The appellate court rejected this plea holding that in a suit under the Rent Act, mere acquiescence would not bar the landlord from seeking a decree for eviction. In this context, the appellate court also relied on a judgment of the Bombay High Court in *Kasturchand Panachand Doshi v. Yeshwant Vinayak Sainkarl*. In that case, the same question was considered and ultimately it was held that acquiescence does not save the tenant from the decree of eviction if he had used the premises for the purpose other than for which it was originally let out. In our view, the conclusion reached by the appellate court appears to be correct.

3. Shri Lalit, learned Senior Counsel appearing for the appellants, however, submits that the fact that the landlord received rents and that the change of user was there for a number of years should be taken into account in considering whether it is a mere acquiescence or whether it is a fact that there was no change of user at all. We see no force in this submission. We are concerned 1 AIR 1980 Bom 270: 1980 Bom CR 424 with the conditions in the lease deed and the grounds on the basis of which the suit was filed. Section 13 of the Bombay Rent Act lays down that-

"if the court is satisfied that the tenant has committed any act contrary to the provisions of clause (a) of Section 108 of the Transfer of Property Act can order eviction."

Therefore, a long use of the premises for the purposes other than the one for which it was originally let out cannot bar Section 13(1)(a) being applied in a suit under the Bombay Rent Act. For these reasons, we see no merit in this appeal. It is accordingly dismissed.

4. However, in view of the fact that the appellant has been using the premises both for agricultural and non- agricultural purposes since 1946 and has also erected some sheds, we think it is just and necessary that the appellant should be given some reasonable time to vacate the premises. Accordingly, the appellants are given time till the end of 1996, on filing the usual undertaking in this Court. During this period, the appellants shall continue to pay the rents regularly as agreed upon, and should also pay arrears of rent, if any. The said undertaking has to be filed by all the appellants before this Court within three months from today, failing which the eviction order shall be enforced.