Supreme Court of India
Patel Chandulal Trikamial & Ors vs 1. Raori Prabhat Harji2. Rabari ... on 8 November, 1995
Equivalent citations: 1996 AIR 532, 1995 SCC Supl. (4) 167
Author: M S V.
Bench: Manohar Sujata (J)

PETITIONER:
PATEL CHANDULAL TRIKAMIAL & ORS.

Vs.

RESPONDENT:
1. RAORI PRABHAT HARJI2. RABARI MALJI RAIMAL (DEAD) BY LRS.

DATE OF JUDGMENT08/11/1995

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
PUNCHHI, M.M.

CITATION:
1996 AIR 532 1995 SCC Supl. (4) 167
1995 SCALE (6)239

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V. Manohar.J.

The appellants in both these appeals are the owner or a large piece of land. Out of this land. the appellants created tenancies of a portion of the land in favour of the original respondents with effect from land in favour of the original respondent with effect from let of April, 1954. The respondents are cow-herds. The appellants had given the said land to the respondents for keeping or grazing their cattle. The respondents were required not to make any other use of the said land. The rent note executed by each of the respondents-tenants contained the following term:-

"I have measured the land. I will not use the land lying beyond the said limits,. I will put up a wire-fencing demarcating the demised land."

Both the tenants, in contravention of this term in the rent note, encroached upon the adjacent land of the appellants and used it for tethering their cattle. On learning about the encroachment, the appellants addressed a notice dated 22nd of January, 1968 terminating the tenancy on the ground, inter alia, of having committed a breach of the terms of the tenancy. The appellants had also contended that the respondents had committed defaults in payment of rent and were in arrears of rent.

The suits filed by the appellants against the respondents were decreed by the trail judge on both the grounds, namely, that each of the tenants had committed a breach of the terms of the tenancy and were also not ready and willing to pay the standard rent in respect of the demised land.

The two tenants preferred separate appeals before the appellate Bench of the Court of Small Causes. The appellate court held that the respondent in present CA No. 1110/1980 was not in arrears of rent. while the respondent in the present CA No. 1111/1980 was. It also peld that the tenants in the appeals had committed a breach of the terms of the tenancy. Hence a decree under Section 12(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was passed against both the tenants. A decree under Section 12(3) (b) of the Act was also passed in respect of the respondent in CA No. 1111/1980. The Revision Applications filed by both the tenants and/or their legal representatives were,however, allowed by the High Court. The High Court has taken the view that the term in the rent note set out above did not constitute a term or condition of tenancy. It also held that the respondent in CA No. 1111/1980 was not in arrears of rent. Hence the Revision Applications filed by both the tenants were allowed. The present appeals are from the tenants were allowed. The present appeals are from the above judgment of the High Court.

The common question which has been raised before us is whether the above term constitutes a term of the tenancy. On facts, there is no disputs that the tenants have encroached upon the adjacent land of the landlord and are using it for the purpose of tethering their cattle.

It is contended before us that the above term in the rent note cannot be considered as a term of the tenancy because it does not relate to the land in respect of which the tenancy was created. It relates to the adjoining land. Hence at the highest, it is a personal obligation cast on the tenant. We find it difficult to accept this contention. Clearly the tenancy of land was given for the purpose of tethering cattle. The tenancy was of a portion of an open piece of land which belonged to the landlord. Looking to the nature of the use to which the open land was to be put by the tenants, it was provided in the rent note that the tenant will use only the portion of the rent note that the tenant will use only the portion of the open land which was given to him. and will not use the open land lying beyond the limits of the land given to him on tenancy. The clear intention of the parties was to ensure that the tenant only used the land demised to him and would not allow his cattle to stray beyond the demised land. For the same reason, it was also provided in the rent note that tenant would fence the land. In this context, this is a condition which is imposed on the tenant as a condition of his tenancy. Looking to the purpose for which the tenancy was given, this is not just a personal obligation cast on the tenant not to tresspass upon the adjacent land. The landlord out of his entire land, has given only a portion of the land to the tenant on condition that he confines his cattle to the demised land and does not allow his cattle to tresspass over the owner's land. Such a condition is not severable

from the terms of the tenancy looking to the nature of the tenancy which was granted. It relates to the manner in which the demised land was to be used by the tenant. Both the fencing and the obligation not to go beyond the fencing or the demised land have to be read together. Hence the obligation contained in the rent note is not a personal obligation of the respondents. It is an obligation of the respondents. It is an obligation which has been cast on them in their capacity as tenants of an open plece of land which was given to them for tethering cattle. It is directly linked with the manner in which the demised land is to be enjoyed by the tenants and is an integral part of the rent note.

Respondents in both the appeals have committed a breach of this term of the tenancy. The first appellate court had, therefore, rightly passed a cecree of eviction in favour of the appellants.

In the premises, the impugned judgment is set aside and the appeals are allowed with costs.