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IN THE COURT OF ADHOC DISTRICT JUDGE – 1
AT PUNE
(PRESIDED OVER BY R. B. AGARWAL)

CIVIL APPEAL No.667/2010

EXH.NO.

APPELLANT :

**Mr. Chandrakumar Popatlal
Baldota,**

Age – 50 Yrs, Occu.-Business,
Residing at-2418-A, East Street,
Camp, Pune-411 001.

VERSUS

RESPONDENTS : 1. **Mrs. Mehre Addie Mehur Hommji,**
Age about-74 Yrs, Occu.-Household,
Residing at 6152, Australia.

Through her Constituted Attorney
Mrs. Frenny Cros Watchmaker,
Age about-67 Yrs, Occu.-Household,
Residing at Pandurang Co-operative
Housing Society Ltd., A. B. Marg,
Mumbai-400 059.

2. **Burjor Eruchashaw Bharucha**
(since deceased through his Lrs.)
Shri. Ramesh Shankarlal Bhandari,

Age-60 Yrs, Occu.-Business,
Residing at Konark Apartment,
175, Dhole Patil Road,
Pune-411 001.

- 3. Mr. Sharukh Sorab Irani,**
Age-Adult, Occu.-Not known,
Residing at-C/o-Mr. Parvez Irani,
Akash TGravels, 80/25, Sarosh
Apartments, Quarter Gate, Nana Peth,
Pune.

Shri. C. V. Atre, Advocate for the Appellant.
Shri. C. V. Wakankar, Advocate for Respondents.

ORAL JUDGMENT
[DELIVERED ON:15/10/2016]

This appeal is directed at the instance of defendant no.3 challenging the judgment and decree passed by learned Small Causes Court, Pune in Civil Suit no.306/2004 on 02/08/2010 whereby suit filed by respondents/plaintiffs came to be decreed. Parties are hereinafter referred as per their original nomenclature.

02. Brief facts of the plaintiff's case are as under :-

It is contended that suit property is owned by plaintiffs. It was received to the plaintiffs under leasehold rights with Pune Cantonment Board. The suit property was let out to defendant nos.1 and 2 for residential purpose on monthly rent of

Rs.125/-. Defendant nos.1 and 2 have not used the suit premises since last many years without just and sufficient cause. They have inducted defendant no.3 in the suit property without previous permission of the plaintiffs. The defendant no.3 had carried out permanent alteration in the suit premises without the previous written permission from the plaintiffs as well as Pune Cantonment Board and planning authority. He has put additional door on the western side of the suit property and for that purpose demolished the part of the wall. He has demolished toilet block. There were four doors which were used by neighbouring occupants but those doors were closed by defendant no.3 by constructing a wall in bricks. On all such grounds, plaintiffs prayed for decree of eviction.

03. Defendant no.1 filed written statement at Exh.28 and denied all adverse contentions. Relationship as landlord and tenant is admitted. It is contended that learned trial court has no jurisdiction to try the suit. It is denied that he inducted defendant no.3 in the suit premises. The alterations were made by the defendant no.3. It is contended that state legislature has no authority to make Maharashtra Rent Control Act applicable to the properties of Pune Cantonment Board. Only Central Government has power to pass any notification. Thus, prayed for dismissal of the suit.

04. The suit came to be dismissed against defendant no.2.

05. Defendant no.3 filed written statement at Exh.33 and contended that he was inducted in the suit property by plaintiff no.1 on the basis of agreement to sale. Plaintiff no.1 agreed to sell his 1/4th undivided share in the suit property. Plaintiff no.1 suggested him to take possession by settlement with defendant nos.1 and 2. Accordingly, he came in possession of the suit premises. On the basis of agreement of sale, he became the owner and hence permission for alteration of plaintiffs is not necessary. He also raised the issue of jurisdiction. Thus, prayed for dismissal of the suit.

06. Learned trial court at the conclusion of trial passed the impugned judgment and decree. Suit was decreed on the ground of non-user, illegal subletting and permanent alterations.

07. There is no cross-objection by defendant no.1.

08. Learned counsel for the defendant no.3 submitted that he came in suit property with the permission of plaintiff no.1 on the basis of agreement of sale and on settlement with defendant no.1. It is submitted that the restriction of alterations is applicable

to the tenant only and not to the sub-tenant. Nobody entered in the witness box from the plaintiffs. Defendant no.3 has filed agreement of sale on record and he has also filed suit for specific performance of contract and therefore the Rent Act is not applicable to defendant no.3. Lastly, it is submitted that the trial court has no jurisdiction to try the suit. Hence, submitted that impugned judgment is not according to the law and requires interference at the hands of this court.

09. Per contra, learned counsel for the plaintiffs submitted that once the State Legislature while enacting Maharashtra Rent Control Act made the Act applicable to the properties of Pune Cantonment Board then the virus of the Act cannot be challenged in this court or in the trial court. Therefore, as the properties situated in the area of Pune Cantonment Board are mentioned in Schedule annexed to Maharashtra Rent Control Act the court has to simply act upon the State Legislature. Thus, the court is having jurisdiction to try the suit. It is also submitted that defendant no.3 has admitted that he was inducted in the suit property by defendant no.1 and he has made permanent alterations in the suit premises and therefore ground of subletting and permanent alterations has been proved from the own admissions of defendant no.3. It is submitted that defendant no.1 has admitted that he is not using the suit premises and it was given to the

defendant no.3 in the year 2004 and therefore ground of non-user by the tenant is proved. He supported the impugned judgment and decree.

10. From the facts, following points arise for my determination along with my findings thereon for the reasons stated below :-

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether learned trial court has jurisdiction to try the suit ?	 Yes
2] Do plaintiffs prove that defendant nos.1 and 2 have not used the premises since more than six months immediately preceding to the date of suit ?	 Yes
3] Do plaintiffs prove that defendant nos.1 and 2 have illegally sublet the premises to defendant no.3 ?	 Yes
4] Do plaintiffs prove that defendant no.3 carried out permanent alterations in the suit premises ?	 Yes
5] Whether plaintiffs are entitled for the possession ?	 Yes
6] Whether interference in the impugned judgment and decree is necessary ?	 No
7] What order ?	Appeal is dismissed.

REASONS

POINT NOS.1 TO 7:

11. Plaintiffs have examined (PW1) Ramesh Bhandari at Exh.55 and (PW2) Anup at Exh.90. Defendant no.1 did not adduce any oral evidence. Defendant no.3 has examined himself at (DW1) at Exh.71.

12. On the point of jurisdiction, before enacting Maharashtra Rent Control Act Bombay Rent Act was applicable in the area of Pune. Central Government has issued notification under Bombay Rent Act and thereby made Act applicable to the properties situated within Cantonment area. Now Bombay Rent Act is repealed. No new notification has been issued by the Central Government under Maharashtra Rent Control Act. The said Act was made applicable to the Cantonment area as it found place in Schedule II Part IV of the Maharashtra Rent Control Act. So, there is no separate notification is required under section 58 (c) of the Maharashtra Rent Control Act. The question of competency of the State Government is out of the jurisdiction of this Court as well as learned trial court. Reliance can be placed in the case of **West Bengal Electricity Regulatory Commission Vs. C.E.S.C. Ltd. etc (AIR 2002 SC 3588)** particularly paragraph nos.45 to 48 of the said judgment. In the light of said precedent, the virus of the Act is out of the competence of this court.

Therefore, till Schedule II Part IV of Maharashtra Rent Control Act is on statute book then the proposition as it stands is to be accepted and acted upon. Therefore, in my considered view, learned trial court has jurisdiction to try and entertain the suit.

13. The submission of the learned counsel of the defendant that none of the plaintiffs have entered into witness box to prove their grounds of eviction and therefore adverse inference should be drawn against the plaintiffs. (PW1) Ramesh Bhandari (Exh.55) has deposed on the basis of power of attorney (Exh.62). He has deposed that he has personal knowledge about the facts of the present suit since prior to the institution of present suit. As per settled law power of attorney holder is also a competent witness on behalf of the plaintiffs provided that he has personal knowledge in respect of the transactions and therefore I do not find much force in the submission of learned counsel for the defendant. No doubt, plaintiff nos.2 and 4 being the owners of the suit property had not given power of attorney to the said witness but it will not have any effect on the evidence because on the same facts it is not necessary to examine all the plaintiffs. He has deposed that defendant no.1 and 2 are not using the suit premises since long and they have inducted defendant no.3 in the suit property. There is no evidence in rebuttal on behalf of defendant no.1. Defendant no.1 though denied the ground of subletting and

non-user in his written statement but he admits that the suit property is in possession of defendant no.3. He also admits in the written statement that permanent alterations were made by defendant no.3. These admissions clearly establishes that property is in possession of defendant no.3 and defendant no.1 is not in use and occupation of the suit property.

14. Defendant no.3 deposed at Exh.71 that his possession is with the consent of plaintiff no.1 and defendant no.1 has handed over the possession to him. The burden shifts on the defendant no.3 to show in what capacity he is in possession of the suit property. It is clear from the evidence that he has been inducted by defendant nos.1 and 2. The defendant no.3 claims independent right in the suit premises on the basis of agreement of sale. The document of application and order passed in the suit for specific performance in respect of temporary injunction is produced at list Exh.61. Even though it is not marked as exhibit in the trial court but it can be considered at appellate stage. It shows that he has filed suit for specific performance against plaintiff no.1. It is pending in the competent court. The injunction is granted against the present plaintiff no.1 from creating third party interest. The said order does not have any bearing on the controversy between the parties before me. Mere agreement of sale does not confer any right, title in the suit property. There is no

consent filed on record by the defendant no.3 given by plaintiffs. Thus, the possession of defendant no.3 without the consent of the plaintiffs is illegal.

15. The defendant no.3 has admitted that he carried out alterations without the permission from planning authority, Pune Cantonment Board and the plaintiffs. He intends to support his case on the premise that he became owner on the basis of agreement of sale. However, this stand of the defendant no.3 is not acceptable and also not according to law.

16. Considering all above facts, I am of the opinion that plaintiffs have succeeded in proving all the grounds of eviction available under Maharashtra Rent Control Act. The learned trial court by its well-reasoned order and on the basis of appreciation of evidence passed the impugned judgment. I do not find that any contrary view is available on record and therefore no interference is necessary in the impugned judgment.

17. Cumulative effects of above discussions leads me to hold that appeal is liable to be dismissed. Thus, by answering the points accordingly, I proceed to pass the following order.

ORDER

- 1] Appeal is dismissed.
- 2] The judgment and decree passed by learned Small Causes Court, Pune in Civil Suit no.306/2004 on 02/08/2010 is confirmed.
- 3] Parties to bear their respective costs.
- 4] Decree be drawn up accordingly.

Sd/-

(R. B. Agarwal)

Date:-15/10/2016

Adhoc District Judge –1, Pune.

CERTIFICATE

I affirm that the contents of this P. D. F. file judgment are same, word to word, as per the original judgment.

Name of the Stenographer : S. Y. Shaikh

Court's Name : Shri. R. B. Agarwal,
Adhoc District Judge – 1 &
Addl. Sessions Judge, Pune.

Date of judgment : 15.10.2016

Judgment signed on : 15.10.2016

Judgment uploaded on : 17.10.2016