

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

October 13.

NOWROJI HORMUSJI PATUK (ORIGINAL PLAINTIFF), PETITIONER v.
SHRINIVAS V. PRABHU (ORIGINAL DEFENDANT), RESPONDENT^o.

*Bombay Rent (War Restrictions) Act (Bom. Act II of 1918), section 9—
Premises reasonably and bona fide required by landlord—Amount of space
required.*

The plaintiff, who carried on his business in hardware in a rented shop in the Fort in the City of Bombay, being obliged to vacate it, wanted to occupy an equal space in his own premises in another locality, in order to store his goods and expose them for sale. The trial Judge, holding that it would not be profitable for the plaintiff to occupy the whole of the premises, decreed possession of part only.

On an application being made to the High Court,

Held, decreeing the claim for possession, that to prevent the plaintiff from occupying a space of his own premises equal to the space previously rented by him, on the ground that it would not be profitable for him to occupy the whole of the premises, would be going entirely beyond the jurisdiction of the Court in cases falling under the Bombay Rent Act 1918, the plaintiff himself being normally the person to judge his own requirements.

APPLICATION under Extraordinary Jurisdiction praying for reversal of the decree passed by Chief Judge of the Court of Small Causes at Bombay.

Suit in ejectment.

The plaintiff was the owner of a building situate at Lamington Road, Bombay. The ground floor of the building which consisted of seven compartments was let for shops.

For the purposes of his business which was carried on in foreign fancy articles and dairy implements, the plaintiff had rented a shop at Hornby Road, the floor space of which was 2,000 square feet. In an ejectment

^o Civil Extraordinary Application No. 305 of 1920.

suit against him, he had to vacate the shop and consequently he wanted to occupy his own premises at Lamington Road to store his goods and expose them for sale.

The area of the ground floor which the plaintiff wanted to occupy being less than the space which the plaintiff had rented at Hornby Road, he gave notices to all his tenants to vacate and succeeded in getting the tenants in five compartments ejected through Court.

The present suit and a suit against another tenant came on for hearing before the learned Chief Judge who had decreed the plaintiff's suits against other tenants. These suits were dismissed on the following grounds :—

"In the first place I am of opinion that this locality is not yet suited for the sort of business which plaintiff wants to start there. It was a business eminently suited to the Fort, and it would take pretty long to develop it here and accustom the population of a residential locality to make purchases of foreign fancy articles and dairy implements. I am further of opinion that the space that he has got at present, viz., five compartments (including the one reserved for funeral rites and for which purposes it can be requisitioned only occasionally) is sufficient for his present needs, and that additional accommodation is not at present reasonably required for starting and conducting his business."

The plaintiff appealed to the High Court.

D. R. Patwardhan, for the petitioner.

No appearance for the opponent.

MACLEOD, C. J. :—The plaintiff filed this suit in the Small Causes Court to eject his tenants (the defendants) from certain shops in Lamington Road belonging to him which he wished to use for his own purposes. The plaintiff had previously rented certain premises in Hornby Road the floor space of which was 2,000 square feet. He had to vacate these premises and consequently

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he wanted to occupy his own premises in order to store his goods and expose them for sale. It is not suggested that he is asking the Court to eject the defendants from a greater space than the space he occupied in the premises he rented in the Hornby Road. But the learned Judge considered that it was for him to decide how the plaintiff's business should be carried on and what amount of space in the plaintiff's premises would be adequate for that purpose. He thought that it would not be profitable to the plaintiff if he occupied the whole of the premises, and so he ordered that the plaintiff should only get possession of a part, as it might take time to accustom the population of that locality to purchase the kind of goods which the plaintiff was selling. As a result he held that the space which was occupied by the defendants in this suit was not reasonably required for the plaintiff's use.

Now we do not say that there may not be cases in which if a plaintiff, doing business in rented premises on a small scale, wanted to occupy premises of his own which were far larger than those rented by him, the Court would not have power to decide that the plaintiff was asking for more space than was reasonably required. But in this case the plaintiff is not asking for more space than he had previously been in occupation of for the purpose of his business. It is true he had to move from one part of the city to another. But in our opinion the plaintiff was the person to decide whether he should occupy as much or less space for his business in his own premises. There was nothing unreasonable in his thinking that the goods which he had stored in the premises in Hornby Road could with equal advantage be stored in the premises in Lamington Road. If he had been asking the Court to give him an ejectment order against tenants occupying a far

greater space than he had occupied in the rented premises, then no doubt it might have been a different matter. It seems to us that to prevent the plaintiff from occupying a space in his own premises equal to the space previously rented by him on the ground stated by the learned Judge would be going entirely beyond the jurisdiction of the Court in cases falling under the Rent Act. We make the Rule absolute.

There will be a decree for possession within one month of the service of this order on the occupants of the shop with costs throughout.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

FULL BENCH.

Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Shah and Mr. Justice Fawcett.

DATTATRAYA GOVINDSETH LUBRI (ORIGINAL DECREE-HOLDER), APPLICANT v. PURSHOTTAM NARAYANSETH DALI (ORIGINAL RIVAL DECREE-HOLDER), OPPONENT^o.

Civil Procedure Code (Act V of 1908), section 73—Decree—Execution—Rateable distribution—Decree claiming distribution challenged on the ground of fraud—Fraud cannot be gone into by executing Court—Practice and procedure.

The opponent obtained a decree in execution of which assets were realised and brought into Court. The applicant who also held a decree against the same judgment-debtor claimed rateable distribution. The opponent having pleaded that the applicant's decree was obtained by fraud, the executing

^o Civil Extraordinary Application No. 111 of 1921.

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