

1951

ABBA GANI
AND CO.

v.

TRUSTEES
OF THE
PORT OF
BOMBAY

Chagla C. J.

stare decisis. And in support of the doctrine of *stare decisis*, Sir Norman Kemp has referred to two decisions of this Court in *Burjori v. Jamshed*,⁽¹⁾ and *Balvanta v. Bira*,⁽²⁾ where this Court has held that a defaulting party is not entitled to return of deposit-money.

The result, therefore, is that the plaintiffs are not entitled to the benefit conferred by s. 74 of the Contract Act, because they are suing for the refund of a deposit to which that section does not apply. They are not entitled to relief against forfeiture on equitable grounds, because they repudiated the contract, and being in default they are not entitled to the refund of a deposit which was intended as a guarantee for the performance of the contract. The learned Judge below took the same view of the law and dismissed the plaintiffs' suit. In our opinion, the learned Judge was right.

The appeal, therefore, fails and must be dismissed with costs.

Appeal dismissed.

M. W. P.

⁽¹⁾ (1913) 15 Bom. L. R. 405.

⁽²⁾ (1897) 23 Bom. 56.

APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

STATE v. MULCHAND KHUSHIRAM.*

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City of Bombay Police Act (Bom. IV of 1902), s. 111—Trespass upon private open land—'Premises,' meaning of—Whether word includes open land—Indian Penal Code (Act XLV of 1860), s. 441.

The word "premises" used in s. 111 of the City of Bombay Police Act, 1902, does not include open plots of land. Therefore, the section does not apply in cases of trespass upon open lands which do not belong to Government or which are not appropriated to public purposes.

Beacon Life and Fire Assurance Co. v. Gibb,⁽¹⁾ referred to.

* Criminal Revision Application No. 614 of 1951.

⁽¹⁾ (1862) 1 Moore P. C. N. S. 73, 97.

CRIMINAL REVISION APPLICATION from the conviction and sentence passed by M. J. Gordhandas, Presidency Magistrate, 19th Court, Esplanade, Bombay.

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Plot No. 91 opposite the Marine Lines Station at Bombay belonged to Sonavala & Co.

On April 9, 1951, the manager of the properties of Sonavala & Co. filed a complaint against Mulchand Khushiram (accused) and others alleging that they had encroached upon the open plot for the purpose of carrying on their business of hawking in eatables. The accused was thereupon prosecuted under s. 111 of the City of Bombay Police Act, 1902, for wilfully trespassing on the land without any satisfactory excuse.

The accused pleaded that he was an employee of one Mohansingh who was regularly paying rent to the complainant, and in the alternative he contended that the section did not apply to a trespasser on an open piece of land belonging to a private individual.

The trying Magistrate disbelieved the defence story and also rejected the legal contention. He, therefore, convicted the accused and sentenced him to pay a fine of Rs. 20. In his judgment the learned Magistrate observed:—

“Under s. 111 of the B. C. P. Act a person who without satisfactory excuse wilfully enters or remains in or upon any dwelling house or premises or any land or ground attached thereto would be punished. I cannot give another meaning to the word ‘premises’ in order to improve the construction of the section enacted by the legislature. If premises would include land then I cannot say that it does not include land. If the legislature did not want premises to mean land, then they might have used any other word to signify that premises did not include land. The word ‘any’ precedes dwelling houses or premises and the word ‘any’ also precedes land or ground. It may be possible that no land would be attached to premises when it is a land, that is trespassed upon. But premises would include both land and structures. When premises are structures in a particular given case, then a trespass on the land or ground attached to such structures would also be a trespass. When premises would only mean land, then there would be no question of any land or ground attached to such land.”

The accused applied in revision to the High Court.

Gopaldas N. Lal, for the applicant.

C. K. Shah, for Government Pleader for the State.

K. J. Khandalavala, with *Bhaishankar, Kanga & Girdharlal*, for the complainant.

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CHAINANI J. This is an application in revision by the accused against his conviction under s. 111 of the City of Bombay Police Act and the fine of Rs. 20 imposed upon him.

The accused has been found guilty of trespassing upon an open plot of land belonging to Sonavala Co. Ltd. of which Company the complainant is the manager. The accused challenges his conviction on the ground that s. 111 of the City of Bombay Police Act does not apply in cases of trespass on open plots of land. S. 111 of the City of Bombay Police Act is in the following terms:

"Whoever without satisfactory excuse wilfully enters or remains in or upon any dwelling house or premises or any land or ground attached thereto, or on any ground, building, monument or structure belonging to Government or appropriated to public purposes, or on any boat or vessel, shall, whether he causes any actual damage or not, be punished with fine which may extend to twenty rupees".

Leaving out of consideration boats and vessels, the section deals with trespass on two kinds of properties, private properties and secondly properties belonging to Government or appropriated to public purposes. The plot, on which the accused is said to have committed trespass, does not belong to Government, nor is it appropriated to public purposes. The accused can therefore, be held liable only under the first part of the section. He would be so liable, if the word "premises" can be said to include open land. It is true that according to its dictionary meaning the word "premises" includes land. But as pointed out in the case of *Beacon Life and Fire Assurance Co. v. Gibb*,⁽¹⁾ the word "premises" in popular language frequently means buildings. The question to be determined therefore, is whether the word "premises" is used in this restricted sense in s. 111 of the City of Bombay Police Act. The reply to this question is provided by the words used in the section itself. The words "or any land or ground attached thereto" clearly show that the word "premises" is not intended to include any land or ground. For otherwise the words "or any land or ground attached thereto" would be superfluous. If the intention of the Legislature had been to provide for cases of trespass not only upon buildings but also on lands, the words in the section would have been "in or upon any building or land" and not "in or upon any dwelling house or premises or any land or ground attached thereto". This intention of the Legislature is also made clear by the different language used in the second part of the section, the words used being "or, on any ground, building,

⁽¹⁾ (1862) 1 Moo. P. C. N. S. 73.

monument or structure belonging to the State or appropriated to public purposes". In the case of properties belonging to the State or appropriated to public purposes, the Legislature has, therefore, made the section applicable to cases of trespass on open plots of land by specifically using the words "or on any ground".

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It has been urged before us that the object of s. 111 is to deal with acts of trespass in circumstances in which they would not constitute offences under the Indian Penal Code. Under s. 441, *Indian Penal Code*, a material ingredient of the offence of criminal trespass is entering into or remaining upon someone else's property *with intent to commit an offence or to intimidate insult or annoy any person in possession of such property*. No such intention is required for an offence under s. 111 of the *City of Bombay Police Act*. A person would be guilty of this offence, if he enters or remains in or upon any property without any satisfactory excuse even if he does so without the intention mentioned in s. 441, *Indian Penal Code*. It has been urged that the Legislature could not have intended to differentiate between trespass into buildings and trespass upon lands, that the object of the Legislature in enacting s. 111 of the *City of Bombay Police Act* must have been to provide for all acts of trespass in cases in which they would not constitute offences under the *Indian Penal Code* and that we must therefore give a wider meaning to the word "premises" so as to make the section applicable even in cases of trespass upon open lands. The intention of the Legislature is, however, to be gathered from the provisions enacted by it. As I have pointed out, the words "or any land or ground attached thereto" in the first part of the section clearly show that the Legislature did not intend to provide for cases of trespass on private lands. This intention is further made clear by the use of different language in the case of private properties and properties belonging to the State or appropriated to public purposes.

During the course of arguments some stress has been laid on the words "any land or ground" and as they both refer to open or unbuilt plots of land, it has been urged that the words "or ground attached thereto" go not only with the words "any dwelling house or premises", but also with the words "or any land". It has further been contended that the first part of the section deals with trespass not only in or upon "any dwelling house or premises" but also upon "any land". We do not think that we can accept this argument, having regard to the words

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used in the section. If the object had been, as is now suggested, the words would have been somewhat as follows: "in or upon any dwelling house, premises or land or any ground attached thereto".

We are, therefore, of the opinion that the word "premises" used in s. 111 of the City of Bombay Police Act does not include open plots of land, and that this section does not apply in cases of trespass upon open lands, which do not belong to Government or which are not appropriated to public purposes.

The conviction of the accused and the sentence passed upon him are, therefore, set aside and he is acquitted. Fine, if paid, should be refunded.

Conviction and sentence set aside.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.

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Oct. 3

MULCHAND GULABCHAND v. MUKUND SHIVRAM BHIDE
AND OTHERS.*

Bombay Co-operative Societies Act (Bom. VII of 1925), ss. 54, 71 (2) (u)
—Bombay Co-operative Societies Rules, 1927, r. 36—Prohibition against legal practitioners from appearing in arbitration proceedings
—Validity of rule—Constitution of India, art. 19 (1) (g)—Fundamental right of legal practitioners to practise profession—Whether prohibition affects fundamental right—Difference between statutory rules and by-laws—Unreasonableness of statutory rule whether a ground for challenging it—Indian Bar Councils Act (XXXVIII of 1926), s. 14 (1)—Bombay Pleaders Act (Bom. XVII of 1920), s. 8.

Rule 36 of the Bombay Co-operative Societies Rules, 1927, which totally prohibits representation of a party by a legal practitioner in arbitration proceedings arising under s. 54 of the Bombay Co-operative Societies Act, 1925, is a rule of procedure not affecting substantive rights. It is, therefore, validly made under s. 71 (2) (u) of the Act.

In re Godinho,⁽¹⁾ referred to.

Further, the rule does not violate the fundamental right guaranteed to a lawyer under art. 19 (1) (g) of the Constitution of India to practise

* Civil Application No. 619 of 1951 with C. A. No. 942 of 1951.

⁽¹⁾ (1933) 36 Bom. L. R. 1 (F. B.).