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Chagla C. J.

regard to the jurisdiction of this Court and if the jurisdiction is absent, no order passed by the Court can confer jurisdiction upon it. Therefore, in our opinion, it is not open to us to answer the second question which has been raised by the Tribunal at our instance.

The result, therefore, is that we must answer the first question in the affirmative. We do not answer question No. 2. Assessee must pay the costs.

Attorneys for applicants: *Rustomji & Ginwalla.*

Attorneys for Commissioner: *N. K. Petigara.*

Answer accordingly.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

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Aug. 14

RANCHHODLAL MANEKLAL VYAS (ORIGINAL PLAINTIFF), APPELLANT *v.* MANEKLAL PRANJIVANDAS SHAH (ORIGINAL DEFENDANT), RESPONDENT.*

Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947), ss. 28 (a) and 50 Proviso—Suit for possession of premises pending in the Court of Civil Judge, Senior Division—Whether the said Court has jurisdiction to try the suit after the Act came into force—Construction.

A suit for possession of premises instituted by a landlord against his tenant before the coming into operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was pending in the Court of the Civil Judge, Senior Division, when the said Act came into operation. On the question whether the said Court had jurisdiction to try the suit,

Held, that under s. 28 (*aa*) and the proviso to s. 50 of the Act a suit for fixing or recovery of rent or for possession of premises pending in the Court of the Civil Judge, Senior Division, has to be transferred to the Court of Small Causes (where such Court is established) for it alone has jurisdiction to try the suit. The words in the proviso to s. 50, "or shall be continued in such Courts, as the case may be" do not validate the proceedings in the Court of the Civil Judge, Senior Division, which is not authorised to try the suits under the Act.

Nilkanth Ramchandra Chandole v. *Rasiklal Mulchand Gujar*,[1] referred to.

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* First Appeal No. 212 of 1949.

[1] (1948) 51 Bom. L. R. 280, F. B.

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RANCHHODLAL MANEKLAL v. MANEKLAL PRANJIVANDAS

Rajadhyaksha J.

First Appeal from the decision of K. M. Bhatt, Third Joint Civil Judge (Senior Division), at Ahmedabad.

On December 1, 1947, the plaintiff, a landlord filed a suit in the Court of the Civil Judge, Senior Division, at Ahmedabad for possession of the suit premises. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, came into operation on February 13, 1948. The defendant contended, *inter alia*, that he was a statutory tenant under the Act and was not liable to be evicted.

The Trial Court held that the defendant was entitled to the protection of the said Act and declined to pass an order for eviction in favour of the plaintiff.

The plaintiff appealed to the High Court.

S. M. Shah with *K. T. Pathak*, for the appellant.

S. T. Desai with *C. K. Shah and C. C. Vaidya*, for the respondent.

Rajadhyaksha J. This is an appeal against a decree passed by the Third Joint Civil Judge, Senior Division, Ahmedabad, in a suit which the plaintiff filed in ejectment. The few facts that are necessary for the purpose of disposing of this appeal are these. On January 5, 1939, the defendant passed a rent-note in respect of the suit property in favour of the plaintiff-appellant. After the expiry of five years, he passed another rent-note on February 6, 1944. The rent reserved was Rs. 135 per month. The tenancy actually began on January 3, 1944. The rent-note made a provision for the giving of one month's notice for the purpose of obtaining possession. On October 2, 1945, the plaintiff gave a notice to vacate. As the defendant did not vacate, the plaintiff filed a suit, No. 1770 of 1945, against the present defendant on December 12, 1946. In the written statement, which the defendant filed in that suit, the defendant contended that the suit property belonged not to the plaintiff, but to Chaturbhuj Temple of which the plaintiff was only an officiating Vahivatdar. He added that so long as the plaintiff did not establish his title relating to the suit property, the plaintiff's suit in ejectment was not maintainable. The plaintiff's suit actually came to be dismissed on September 27, 1947, because the Court held that the notice to quit which had been given by the plaintiff was not in order and because the notice had been served not on the defendant himself, but on his constituted attorney. When the plaintiff found that

his title was denied by the defendant, he gave a notice on November 10, 1947, forfeiting the lease on account of the disclaimer of the title on the part of the defendant. To that notice the defendant gave a reply on November 27, 1947, in which he stated that he did not intend to disclaim the plaintiff's title and that the statement made in the earlier suit was made under a mistaken belief. Thereupon the present suit was filed by the plaintiff on December 1, 1947, basing his cause of action on the disclaimer of title by the defendant.

In answer to this suit, the defendant raised several contentions. He stated that the disclaimer had been made under a mistaken belief, that the disclaimer had subsequently been waived by the plaintiff, and that there was no subsisting cause of action at the date of the suit as the disclaimer had been subsequently retracted by the defendant. All these issues were found against the defendant. But there was one defence which was put forward by the defendant and that was based on the Bombay Rent Control Act of 1947. The defendant alleged that by reason of the Act, he was a statutory tenant and that under s. 12 (*1*) of the Act, he was not liable to be evicted so long as he was ready and willing to pay the rent which was fixed.

The learned Judge took the view that the defendant was entitled to the protection of the Rent Control Act as he was a tenant within the definition of the term in s. 5 (*11*) of the Act and as such he was entitled to the protection given by s. 12 of that Act. Having come to that conclusion, the learned Judge declined to pass an order for eviction in favour of the plaintiff, but he merely decreed in favour of the plaintiff an amount of Rs. 3,361-3-0 which was the arrears of rent up to the date of the suit. He directed the parties to bear their own costs. Against that order the plaintiff has come in appeal.

The first point which has been raised by Mr. Shah on behalf of the appellant, and which goes to the very root of the matter, is that the suit has been tried by a Court which has no jurisdiction to try it. The suit was decided on October 1, 1948. At that time the Bombay Rent Control Act of 1947 was in force. Under s. 28 of the Act, only certain Courts had jurisdiction to try the suits under the Act. Section 28 is in the following terms:—

"Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

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(a) in Greater Bombay, the Court of Small Causes, Bombay;

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply."

Clause (*aa*) has been added to this section by an amendment effected by Bombay Act LVIII of 1949 which gives jurisdiction, in the areas in which a Court of Small Causes is established, to that Court to hear suits between landlords and tenants relating to the recovery of rent and possession of any premises to which the provisions of the Bombay Rent Control Act apply. Then there is s. 50 of the Rent Control Act which made a provision regarding the proceedings which were pending at the time when this Act came into force. The present suit was pending before the Civil Judge, Senior Division, Ahmedabad. The proviso to s. 50 read as follows:—

"Provided that all suits and proceedings between a landlord and a tenant relating to the recovery or fixing of rent or possession of any premises to which the provisions of Part II apply.....which are pending in any Court, shall be transferred to and continued before the Courts which would have jurisdiction to try such suits or proceedings under this Act and all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings."

By reason of this provision the present suit which was pending before the Civil Judge, Senior Division, Ahmedabad, had to be transferred to the Civil Judge, Junior Division, who alone had jurisdiction to hear and dispose of the suit under s. 28 of the Bombay Rent Control Act. It appears, however, that the requisite transfer was not made, and the suit ultimately came to be disposed of by the Civil Judge, Senior Division. It is true that by an amendment of s. 50 effected by Bombay Act III of 1949, certain words have been added to this section. These words are, " or shall be continued in such Courts, as the case may be" after the words "try such suits or proceedings under this Act." These words were inserted, as I have stated before, by Act III of 1949, and the relevant section of the Act which introduced these words was s. 10. Under s. 13 of that Act, amendments made by ss. 10 and 11 were given retrospective effect. The actual words of s. 13 are as follows:—

"The amendments made by sections 10 and 11 of this Act shall be deemed to have been made and come into force on the date on which

the said Act came into force and shall always be deemed to have been made and in force from such date."

There is, therefore, no doubt that these amendments must be deemed to have been incorporated in the original section from the date when the Rent Control Act came into force, viz. February 13, 1948. At that time the present suit was pending. Therefore, the question arises as to what is the correct interpretation of the amended s. 50 of the Rent Control Act. With the amendment, the proviso to s. 50 reads as follows:—

"Provided that all suits and proceedings between a landlord and a tenant relating to the recovery or fixing of rent or possession of any premises to which the provisions of Part II apply.....which are pending in any Court, shall be transferred to and continued before the Courts which would have jurisdiction to try such suits or proceedings under this Act or shall be continued in such Courts, as the case may be, and all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings."

It is a possible construction of this section that the words which have been subsequently added, viz., "or shall be continued in such Courts, as the case may be" merely validate the proceedings, even if they are pending in the Court which is not the Court which is authorised to hear the suits under the Act. But, in our opinion, this construction is not correct. These words were added presumably as a result of a decision of this Court in *Nilkanth Ramchandra Chandole* v. *Rasiklal Mulchand Gujar*.[1] It was held by a Full Bench in that case that the retrospective effect of the Rent Control Act of 1947 was confined only to what was expressly stated in s. 50 of the Act, viz., to the suits which were transferred and continued before the proper Courts. An anomalous situation immediately arose by reason of the fact that the retrospective effect of the Act could not be given to the suits which were actually pending in the Courts which were the proper Courts under s. 28 of the Act. In order to remedy this defect, these words "or shall be continued in such Courts, as the case may be," were added. The result was that if the proceedings were pending in the Courts which were not the Courts with jurisdiction under s. 28 of the Act, the suits had to be transferred to the proper Courts; whereas in the case of suits pending in the proper Courts, they were to continue in such Courts, and the provisions of the Act and the rules made thereunder were to apply to all such suits and proceedings. Therefore, it is not correct to contend that the words "or shall be continued in such Courts,

[1] (1948) 51 Bom. L. R. 280.

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as the case may be," were intended to validate the proceedings even if they were pending in the Courts which had no jurisdiction under s. 28 of the Act. If they were pending in Courts which had no jurisdiction, they had to be transferred and continued before the Courts which had jurisdiction, and, by reason of the amendment, if they were already pending in the Courts which had jurisdiction, they were to be continued in such Courts. This construction, in our opinion, also gains strength from the fact that the word "such Courts" is used in plural. Now, the word "Courts" which is used in plural in the earlier part of the section is with reference to the Courts which would have jurisdiction to try the suits and the proceedings pending under the Act. If it had been the intention of the Legislature to validate the continuance of the proceedings even in a Court which had no jurisdiction, then the word would have been used in the singular, for the words "in a Court" in the earlier part of the section have been used with reference to the Courts which had no jurisdiction to try the suits, but the proceedings before which had to be transferred to the appropriate Courts under the Act of 1947. Therefore, the words "such Courts" clearly have reference to the Courts which have jurisdiction to try suits and proceedings under the Act and are not intended to validate the continuance of the proceedings even in Courts which had no jurisdiction to try them. Mr. Desai who has appeared for the respondent has very fairly conceded that that is a reasonable construction; if that is the correct construction, then the continuance of the proceedings before the Civil Judge, Senior Division, Ahmedabad, after this Act came into force would be without jurisdiction and the suit should have been transferred to the appropriate Courts. We must, therefore, hold that the trial of the suit by the learned Civil Judge, Senior Division, Ahmedabad, was without jurisdiction and we must, therefore, set aside the decree of the lower Court and send the case back for trial by the appropriate Court. After the amendment in 1949, the appropriate Court, so far as Ahmedabad is concerned, is the Court of Small Causes, Ahmedabad. We must, therefore, send the case back for trial by the learned Judge of the Small Causes Court, Ahmedabad.

The result, therefore, is that the decree of the lower Court is set aside and the suit is sent back for trial before the learned Judge of the Small Causes Court, Ahmedabad.

The costs of the appeal will be costs in the cause.

Appeal allowed.

K. B. S.