

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 37 OF 2021

Kalpesh Mavjibhai Kajani

...Applicant

Versus

Anees Ahmed Khan and anr.

...Respondents

Mr. S.R. Page a/w. Ms. Eesha Jaifalkar, for Applicant.

Mr. Rushikesh S. Kekane, i/by Mr. Satish C. Kekane for Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.
DATED: 04 DECEMBER 2025

P.C.:

1. Heard, Mr. Page, learned Counsel appearing for the Applicant and Mr. Kekane, learned Counsel appearing for the Respondent No.1.
2. By the present Civil Revision Application the Applicant is challenging the legality and validity of the Judgment and Order dated 14th March, 2011 passed in R.A.E. Suit No.1753/1998 by learned Judge, Small Causes Court, Mumbai as also to the Judgment and decree dated 4th September, 2020 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Appeal No. 30 of 2011.
3. Both the Courts have concurrently held that the Original Defendant No.1 has illegally sublet the suit premises to the original Defendant No.2. The legal heir of original Defendant No.2 is the present

Applicant.

4. It is the submission of Mr. Page, learned Counsel appearing for the Applicant that the Applicant is in possession of the suit premises since 1967 and therefore he is a protected sub-tenant.

5. On the other hand, it is the contention of Mr. Kekane, learned Counsel appearing for the Respondent No.1 i.e. the Original Plaintiff that the Defendant No.1 had created sub-tenancy in favour of Defendant No.2 in the year 1987 and to show that the Defendant No.2 is in possession of the suit premises since 1968 forgery is done in the Shop and Establishment License issued by the Bombay Municipal Corporation.

6. Perusal of the record shows that, both the Courts have concurrently held that the Defendant No.1 has created the sub tenancy in favour of the Defendant No.2 in the year 1987. Both the Courts have held that although the Shop and Establishment License in favour of the Defendant No.1 is of the year 1987, by forging, fabricating and overwriting on the said Shop and Establishment License, the same is shown to be of the year 1968.

7. For recording the said finding both the Courts have relied on the evidence of witness of Bombay Municipal Corporation. The said witness of Bombay Municipal Corporation has stated in Examination-in-Chief that Form No. A for obtaining the said Shop and Establishment Licence

was submitted on 16th July, 1987 and said Form No. A has been produced as Exhibit-46. The same disclose that the Defendant No.2 had applied seeking Shop and Establishment License at the suit premises address on 7th July, 1987. In the Form No. A, date of commencement of business is shown as 1st March, 1987.

8. Both the Courts have relied on the evidence of one Mr. Sunil Parshuram Toraskar, serving in L Ward, Bombay Municipal Corporation, Shop and Establishment Department. The relevant portion of his Examination-in-Chief is as follows :

“Form No. A is required to fill up for getting Shops and Establishment licence from Bombay Municipal Corporation. Defendant No.2 is having licence under Shops and Establishment Act. The said Shop and Establishment licence is issued by L/Ward of the Bombay Municipal Corporation bearing No. L-I/7856 and it is renewed upto 2010. The said licence bears address of the suit premises. The said licence is issued to Bhavna Ladies Tailor. Form No.A is submitted on 16th July, 1987 for getting above said licence. Today I have brought original form No.A. I have brought its true copy which I am producing in the Court. Contents in true copy are true and correct. This document is exhibited as Exhibit 46. In the year 1968, licence fee was Rs. 2.50 Ps. per year.”

(Emphasis added)

Thus, the PW-2, Sunil Parshuram Toraskar, serving in L Ward, Bombay Municipal Corporation, Shop and Establishment Department, specifically stated that Form No. A is submitted on 16th July, 1987 for

getting licence. The said licence was renewed upto the year 2010

9. The evidence has been laid on behalf of Defendant No.2 of one Mr. Kalpesh Mavjibhai Kajani. The relevant portion of his examination-in-chief is as under :

“ 5 I say that the Defendant No.2 i.e. my father was in use, occupation and possession of the suit premises prior to 1968. I say that the Defendant No.2 i.e. my father was residing in the suit premises alongwith Defendant No.1 I say that the Defendant No.2. i.e. my father was paying Rs.15/- to the Defendant No.1 for his occupation and use of the suit premises. I say that the Defendant No.1 used to issue a Receipt to my father for the payment made by my father. I say that after due and diligent search I found the receipt issued by the Defendant No.1. I say that earlier I could not found the same hence I can not rely the same. Now, I am producing the said receipts issued by the Defendant No.1 in favour of the Defendant No. 2 i.e. my father at item 3 I say that the contents of the said receipts is true and correct. I say that the said receipts bear the signature of the Defendant. I say that the said receipts were not traceable as the same were misplaced and after due search I have found few receipts recently. I say that the said receipts be taken on record and be marked as Exhibit. I say that the Defendant No.1 used to pay the rent to the landlord. I say that the then landlord was aware of the said fact. I say that the Defendant No.2 was using the front portion of the premises for the residence as well as for doing his tailoring work. I say that at that time the Defendant No.2 was not married and was residing alone. I say that Defendant No.2 had applied for Shop and Establishment license in respect of the business carried on by the Defendant No.2 in the suit premises since 1968. I am producing the copy of the said shop and Establishment License as item No.4. The same be taken on record and be marked as Exhibit.”

(Emphasis added)

Thus, in the evidence affidavit, it is specifically stated that the Defendant No.2 i.e. the father of the present Applicant was in use and occupation and possession of the suit premises prior to 1968 and he was conducting tailoring business in the suit premises from 1968 and therefore, to support the said case, he has produced the Shop and Establishment Licence.

10. However, Perusal of record clearly shows that the Defendant No.2 has filed application seeking Shop and Establishment license with the shop and licence department of BMC on 16th July, 1987 and therefore, it very clear that the license which has been relied by the Applicant i.e son of Defendant No.2 and which has been produced by him in his evidence is not of the year 1968 and is of the year 1987 and thus it is clear that forged and fabricated document is produced in the evidence.

11. Thus, both the Courts after appreciating the evidence on record have held that Shop and Establishment License produced is forged and fabricated. The said findings are in accordance with the evidence on record.

12. It is further significant to note that the Defendant No.2 has amended the written statement and the amended Para No.2 reads as under.

The relevant portion of the said amendment is as under :

“2. The Defendant states that he is occupying the suit premises for the residence as well as doing the job as a

ladies tailors putting tailoring machines since 1987 which is prior to the auction purchase of the Plaintiffs. The Defendant states that he is holding the Certificate dated 22.07.1987 issued by the Shops and Establishment department of the Bombay Municipal Corporation. The Defendant relies on the said Bombay Municipal Corporation Certificate and crave leave to produce the same.”

(Emphasis added)

13. Thus, the Defendant No.2 by amendment has specifically come with the case that the Defendant No.2 is occupying the suit premises for residential purpose as well as doing the job as ladies tailor since 1987. Thus, reference is to the Shop and Establishment Licence dated 22nd July, 1987.

14. However, it is required to be noted that after realizing that for getting protection as a sub-tenant the Defendant No.2 amended the written statement by introducing para 2(a) to 2(d) which reads as under :

2(a) The Defendant states and submits that the Defendant is in exclusive use and occupation and possession of the suit premises prior to 1968. The Defendant further states that the Defendant was residing in the suit premises alongwith the Defendant No.1 and were paying the rent to the Defendant No.1 who in turn used to pay the rent to the Landlord. The Defendant states that Defendant was in occupation of the suit premises since 1968 and was residing with the Defendant No.1. The Defendant states that original landlord was aware of the said fact. The Defendant states that the Defendant started using the front portion of the premises for residence as well as for doing his tailoring work. The Defendant states that at that time the Defendant was not married and therefore was residing alone.

2(b) *The Defendant states that the Defendant got married in the year 1977 and started residing with his wife in the suit premises. The Defendant states that the Defendant No.1 due to his personal work had to go back to his native place and he gave the possession of the suit premises to this Defendant, and since then this Defendant is in exclusive use and occupation of the premises. The Defendant states that since then this Defendant is not known about the whereabouts of the Defendant No. 1. This Defendant started residing along with his wife and started using the front portion of the premises for doing tailoring work.*

2(c) *The Defendant further states that the previous landlord was aware of the said facts and has consented to the same. **This Defendant further states that this Defendant is in exclusive use, occupation and possession of the suit premises since 1968.** The Defendant states that thereafter in year 1987 one Bhimaji Tulsidas Chaudhary who was a distant relative of Defendant No.1 came to occupy the suit premises for some time and left after 6 months.*

2(d) *This Defendant further states that he is in exclusive use and occupation of the premises and has been using the same for his residence as well as doing Tailoring work. This Defendant states that all his children were born and brought up in the suit premises. **The Defendant states that he is holding the Certificate of 26th August, 1968 issued by the Shops and Establishment Department of the Bombay Municipal Corporation Certificate and craves leave to produce the same.***

(Emphasis added)

Thus, by the amendment what is sought to be contended is that the Defendant No.2 has been staying in the suit premises prior to 1968 and Shop and Establishment License is issued on 26th August, 1968.

15. The factual position on record clearly demonstrates the following aspects :

- i.** In the first amendment to the written statement it is specifically contended by the Defendant No.2 that Defendant No. 2 is in occupation of the suit premises since 1987 and holding the Shop and Establishment License dated 22nd July, 1987.
- ii.** Thereafter, the said written statement has been further amended and it is stated that the Defendant is in exclusive use and occupation of the suit premises prior to 1968 and that he is holding the Shop and Establishment License dated 26th August, 1968.
- iii.** In the evidence of the Defendant No.2 the licence of the year 1968 allegedly issued by the Bombay Municipal Corporation has been produced.
- iv.** The witness of the Bombay Municipal Corporation who has been examined has clearly stated that the application for getting License in Form No. A is submitted by the Defendant No.2 on 16th July, 1987 and the same was renewed up to 2010.

16. Thus, it is clear that Shop and Establishment License of the year 1968 which has been produced in the evidence by the Defendant No.2 is a totally false and fabricated document. Both the Courts have

concurrently held that the said document produced to support the contention that the Defendant No.2 is in possession of the suit premises since 1968 is a forged and fabricated document.

17. One more contention is raised by Mr. Page, learned Counsel appearing for the Applicant to contend that the said document is a genuine document. The said contention is on the basis of the findings recorded in the Judgment and order dated 12th October, 2019 passed by learned Ad-hoc Additional Sessions Judge, Greater Bombay in Criminal Appeal No.156 of 2009.

18. However, the prosecution case in said Criminal Proceeding is that the Accused i.e. the Defendant No.2 had converted the residential room i.e. suit premises into commercial premises by opening tailoring shop which is an offence under Section 53(1) read with Section 53(7) of the Maharashtra Regional Town Planning Act, 1966. In the said Judgment there is some observation to the effect that the Defendant No.2 is having tailoring shop since 1968. However, the said observations are on the basis of the evidence recorded in that case. Both the Courts on the basis of the evidence recorded in this proceeding has recorded concurrent findings that the Defendant No.2 came in possession of the suit premises since 1987 and that the licence produced in the evidence by the Defendant No.2 of the year 1968 is a forged and fabricated document. Thus, in view of the concurrent findings recorded by both

the Courts that forged and fabricated document is produced, it is not necessary to entertain the Civil Revision Application.

19. This is a serious case where the Defendant No.2 continued to be in possession of the suit premises since 1987 on the basis of a forged and fabricated document.

20. Accordingly, in the facts and circumstances, Civil Revision Application is dismissed with Cost of Rs.1,00,000/-

[MADHAV J. JAMDAR, J.]