

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.296 OF 2013

Sow. Sangita w/o. Sunil Agrawal
and anr.

..Applicants

Versus

Ramdayal s/o. Matulal Agrawal
and ors.

..Respondents

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Mr.B.R.Kedar, advocate for applicants

Mr.Amay Sabnis, advocate i/b. Mr.P.B.Gamot,
advocate for respondent nos.1 to 3

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CORAM : M.T. JOSHI, J.

DATE : APRIL 28, 2015

PER COURT :

Heard both sides.

2] During hearing, it is gathered that either present respondents or their predecessor had earlier filed three suits, either against the predecessor of the petitioners or themselves. Two of the suits were for the purpose of recovery of

possession, one on the ground of default in payment of rent and another, for recovery of possession on the ground that the said property has become dilapidated. Both the suits were, however, withdrawn unconditionally.

3] Thereafter, the third suit bearing Regular Civil Suit No.156 of 1002 was filed by the present respondents claiming ownership and even on the ground that the suit property has become dilapidated. The trial Court had dismissed the said suit holding that present respondents are not owners of the suit property. Thereafter, against the said judgment, present respondents preferred Regular Civil Appeal 75 of 2003, which has been dismissed by learned District Judge2-, Jalgaon, vide judgment and order dated 21st April, 2010. Learned District Judge opined that the issue of ownership was superfluous and the same was not required to be decided and since the suit was not

under the Bombay Rent Act, simplicitor for that purpose, the decree of the trial Court was confirmed.

4] Now, in the Regular Civil Suit No.77 of 2011, present respondents came with a case that they are the landlord of the present petitioners and sought their eviction on the grounds of fresh default, the property has become dilapidated and for *bona fide* occupation of the suit property. In the circumstances, present petitioners filed an application under Order VII Rule 11 of the Code of Civil Procedure. The said application came to be rejected.

5] Thereafter, on the application for framing preliminary issues, the trial court framed two issues i.e. whether the suit is hit by principles of *res-judicata* and whether the same was within the limitation. The trial court held that the

suit was not hit by principles of *res-judicata* and it was within the limitation. Hence, present Civil Revision Application.

6] During hearing of the Civil Revision Application, Mr.Kedar, learned counsel for the petitioners has filed on record a copy of reported judgment in the case of **Gulabchand Daulatram Agarwal Vs. Datta Mandir Sansthan Trust, 1986 (2) Bom.C.R. 528.** He submits that recently the petitioners came to know about the said judgment, which would show that the present respondents had sought eviction of said Datta Mandir Trust, claiming to be landlord regarding subdivision of the very same property and the same was, ultimately, dismissed including, on the ground of limitation.

7] Mr.Sabnis, learned counsel for the respondents, submits that while the earlier two

suits were for recovery of possession on the ground of default in payment of rent and dilapidated condition of the suit property, now fresh cause of action has arisen as there was fresh default in payment of rent and for *bona fide* occupation of the suit property.

8] In view of the decision of the learned trial court and further finding that additionally, there is material in view of the judgment in the case of *Gulabchand (cited supra)*, without going into the controversy, in my view, as additional material has come to the knowledge of the present petitioners recently, a fresh decision would be required by allowing the petitioners to amend the written statement in this regard. However, finding that the suit has now reached to the stage of recording of evidence, again deciding the two issues as preliminary issues, would unnecessarily embarrass the further trial in the suit.

9] In the result, the following order :-

a] The order passed by learned 3rd Joint Civil Judge Junior Division, Bhusawal, dated 21st October, 2013, is hereby set aside.

b] The present petitioners would be at liberty to file an application for amendment of the written statement within two months from the date of this order in the light of the above observations.

c] In case, the amendment is allowed, the present respondents would be at liberty to amend the plaint of the suit. Thereupon, instead of deciding the two issues as preliminary issues, the trial court to continue with recording of the evidence and decide the present issues also afresh without being influenced by earlier observations made by it.

d] In the light of the above direction, present Civil Revision Application is disposed of without any order as to costs.

[M.T. JOSHI, J.]

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