

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 692 OF 2015

M/s. Romell Real Estate Pvt. Ltd.

.. Petitioner

Vs.

Mrs.Evelyn Anthony Rodrigues & Ors.

.. Respondents

Mr.Pankaj Sawant, senior advocate a/w. Ms.S.John i/b M.P. Savla i/b M/s. M.P. Savla & Co. for petitioner.

None for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 3RD FEBRUARY, 2015**

P.C.

1 Rule made returnable forthwith and heard.

2 Respondent nos.8 to 11 had filed R.A.E. Suit No.660 of 2003 against respondent nos.1 to 7. During the pendency of the suit, the petitioner herein purchased the suit property. Pursuant thereto an application was taken out by the petitioner and by an order dated 7th January 2011, the petitioner was impleaded as plaintiff no.5. After the plaint was amended on 16th December 2011, respondent no.1 who is the main contesting party filed additional/supplementary written statement in which not only the right, title and interest of the original plaintiff nos.1 to 4 was denied but also the ownership of original plaintiff nos.2 to 4.

3 In view of the impleadment of the petitioner as plaintiff no.5, the trial Court on 18th April 2014 was pleased to revise the issues that were originally framed on 6th January 2010. In the revised issues, there is no reference to defendant no.1, namely, respondent no.1 herein challenging the title of the petitioner herein who was added as plaintiff no.5. The petitioner, therefore, filed an application to the trial Court for leave to amend the plaint further to bring on record the additional grounds for eviction in view of defendant no.1 denying the title of the petitioner, namely plaintiff no.5. This application was rejected by an order dated 22nd February 2013 though there was no reply filed by respondent no.1. The rejection was essentially on the ground that there was a delay in moving the application and under the provision of Order VI, Rule 17 of Code of Civil Procedure, 1908, the application for amendment is not to be allowed after the trial has commenced unless the Court comes to the conclusion that due diligence was shown and that the proposed amendment would change the nature of the suit and the same will cause prejudice to the defendant no.1. Being aggrieved, the petitioner filed a revision petition before the appellate court, which by an order dated 7th November 2014 was rejected. The reason for rejection was that there was delay in filing the application and no case was made out to produce *prima-facie* documentary evidence to allow the petitioner to amend the plaint.

4 On 22nd January 2015, respondent no.1 was present in-person and stated that she has been served a copy of the petition only on 7th January 2015 and hence requested the matter be stood over in order to enable her to consider the application. The matter was stood over to 27th January 2015. The matter, however, got listed on 30th January 2015 and the petitioner was directed to give notice once again to respondent no.1 by hand delivery and the same was made on 30th January 2015 informing her that the matter is placed for admission today. The respondent no.1 refused to accept and therefore a letter was sent by speed post on 31st January 2015. Again on 31st January 2015, a fresh letter was issued informing that the matter will be listed today which again was refused today. Respondent no.1 is not present. The plaintiff to file an affidavit of service within one week from today.

5 Having considered the submissions in the petition, the application that was rejected and the impugned order, in my view, even if the amendment application is rejected, respondent no.1, namely defendant no.1 to the suit, in the additional written statement filed, has denied the title in the written statement. This Court in the matter of ***Silver Jubilee Dryers and Cleaners & Ors. V/s. Hiralal Nemichand Shah & Anr.***¹ has observed that the denial of title in the written statement can also be foundation of decree for eviction.

1 2006(6) Bom.C.R. 530

Paragraph 31 reads as under :-

“31 The ratio of the aforesaid 2 judgments referred to hereinabove unequivocally go to show that if the tenant is apprised of the transfer of title of landlord and if he had acknowledged title of transferee, expressly or impliedly by paying rent to him; then also rule of estoppel comes into operation. The tenant is not permitted to approbate and reprobate and challenge relationship of landlord and tenant. That the denial of title in the written statement can also be foundation of decree for eviction. Following the principles of law holding the field, applying the same to the facts and circumstances of the case at hand, it would be clear that the petitioners-tenants have denied title of the plaintiffs-petitioners-landlords, who had taken over landlordship of the premises. It would, thus, be clear that denial of title was not bonafide. It was just to protract the litigation. Both the Courts below have rightly taken a view that in view of denial of title tenants had forfeited right of tenancy and plaintiffs were entitled for possession of the suit premises. No fault can be found with the findings recorded. The findings of facts recorded by the Courts below can very well be supported by evidence on record. The view taken by the Courts below is a reasonable and possible view. This Court, not being a Court of appeal is not expected to re-appreciate the evidence.”

6 In view thereof, the interest of justice will be met if the issues as framed on 18th April 2012 is revised to include the following two issues as 6(a) and 6(b) after issue no.6 :

6(a) Whether it is proved that plaintiff no.5 is the landlord of the suit premises?

6(b) If the answer to issue no.6(a) is in the affirmative,

whether defendant no.1 having denied the title of plaintiff no.5 with respect to the suit premises is required to be evicted?

7 It is also clarified that all parties are permitted to lead such evidence as required, both oral and documentary, on the additional issues as framed above. The parties are directed to file further affidavit of documents within two weeks from today.

8 The plaintiff no.5 to file further affidavit in lieu of examination in chief within three weeks from today.

9 In view of the above, the petition stands disposed.

(K.R. SHRIRAM, J.)