

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

CIVIL REVISION APPLICATION NO. 314 OF 2014

Indu Kisan Salunke ..Applicant

Vs.

Kerba Genuji Kawade ..Respondent

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Mr. Mahesh Rawool, Advocate for Applicant.
None for Respondent.

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***CORAM : N.M. JAMDAR, J.
DATED : 07 APRIL 2015***

ORAL ORDER:

The applicant challenges the judgment and order passed by the District Judge, Pune dismissing the appeal filed by the applicant confirming the judgment and decree passed by the Small Causes Court, Pune. Four plaintiffs filed a Suit No. 379/1995 seeking injunction against the respondents. These four plaintiffs reside in four rooms in the building owned by the Respondent No.1.

2. It was the case of these plaintiffs that the respondent nos.1 and 2 were obstructing peaceful enjoyment of property as tenant and sought an order of injunction. During the hearing of the suit, Plaintiff No.1 and 3 filed a pursis below Exhibit 31 stating that

they do not wish to prosecute the suit further as the matter is settled between the parties. Accordingly the learned Small Causes Court Judge allowed the pursis and directed that the suit will remain only in respect of Plaintiff Nos.2 and 4. Thereafter the Plaintiff Nos.1 and 3 filed an application below Exhibit 31 to revoke the compromise pursis and set aside the order in respect of dropping the suit as far as they were concerned. This application was rejected by the learned Small Causes Court Judge on 14 April 2001. The order was not challenged and became final. Thereafter the learned Small Causes Court Judge dismissed the suit filed by other defendants.

3. The applicant is the daughter of Plaintiff No.1 and was brought on record after the death of Plaintiff No.1 and she led her evidence and she was cross examined. Thereafter the appeal was filed by the applicant bearing no. 233/2003 which was dismissed by the learned District Judge holding that the proceedings at the behest of the applicant-the heir of Plaintiff No.1 could not have been continued. The appeal was dismissed on 10 October 2013.

4. The learned Counsel for the applicant submitted that after the death of the Plaintiff No.1, the applicant came on record and she was permitted to produce the evidence. The learned District Judge has rightly noted that it was through inadvertent that applicant was continued and the order of withdrawal of suit against

the Plaintiff Nos.1 and 3 had become final and therefore no decree could be passed at the behest of heirs of these plaintiffs.

5. The learned Counsel for the applicant submitted that the respondents had promised to give certain accommodation which is given but is not suitable and it is on public road. The Plaintiff No.1 had made an application for withdrawal of the pursis which was rejected. Merely because the applicant continued on record due to oversight the order of withdrawal cannot be deemed to have been set aside.

6. In any case, the suit which is instituted in the year 1995, there has been no injunction in favour of the applicant. The learned Counsel for the applicant submitted that the applicant is still in possession. If the applicant is still in possession as contended and the occupation as a tenant as alleged, then the landlord will have to take steps for eviction as per the procedure laid down in law. In view of this position, neither there is any case made out on merits nor there is any necessity for granting injunction, which is anyway not granted since the year 1995.

7. The Civil Revision Application is accordingly rejected.

(N.M. JAMDAR, J.)