

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3530 OF 2015**

Abdul Mohammad Momin & Ors.

..Petitioners

Vs.

Shankarrao Gangaram Kudale

..Respondent

Mr. Ashok B. Tajane for the Petitioners

Mr. R. S. Patil for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 3rd DECEMBER, 2015

P.C.

1 The concurrent orders passed by the Courts below directing the eviction of the Petitioners on the ground of carrying out permanent construction within the meaning of Section 16(1) of the Maharashtra Rent Control Act, are taken exception to by way of the above Petition.

2 The Petitioners herein are the original Defendants, whereas the Respondent herein is the original Plaintiff. The Suit is founded on the fact that the Defendants have carried out permanent construction by way of an unauthorised shed to the extent of 250 sq.ft. It was also alleged against the Defendants that they have also constructed tin sheets on the roof by putting iron girder and cement. It is further alleged that the Defendants also raised the height of the walls by 2ft.

3 In defence, the Defendants denied the existence of “bol” (lane) on the southern side of the suit premises. The Defendants denied carrying out of any construction in the said “bol”. It was the case of the Defendants that the suit premises being old they have erected the walls with the permission of the Plaintiff. In so far as raising the height of the walls is concerned, it was the case of the Defendants that after the Plaintiff raised the height of the walls of his lottery shop which is adjacent to the suit premises that the Defendants have raised the height of the walls. The parties led evidence. In so far as the Plaintiff is concerned, the Plaintiff deposed in terms of the pleadings as appearing in the plaint. In so far as the Defendants are concerned, it is only the Defendant No.1 amongst the Defendants whose evidence was adduced, the other witness of the Defendants was another tenant in the property of which the Plaintiff is a landlord who deposed in favour of the Defendants.

4 The Trial Court on the basis of the material on record arrived at a finding of fact that the Defendants have carried out permanent construction in the suit premises in the matter of increasing the height of the walls by 2 ft. without the permission of the Plaintiff and the Municipal Corporation. In so far as the construction of the shed is concerned, the Trial Court in the absence of any contra evidence adduced by the Defendants held that the Defendants have made a permanent construction by way of the shed by covering the bol (lane) on the southern of the suit premises and are using the said shed for storing

their goods and for sleeping in the summer. The Trial Court accordingly decreed the Suit and directed the eviction of the Defendants from the suit premises. The Lower Appellate Court did not find any reason to interfere with the judgment and decree passed by the Trial Court.

5 The Learned Counsel appearing on behalf of the Petitioners i.e. the original Defendants sought to assail the findings recorded by the courts below on the aforesaid aspects of permanent construction being carried out by the Defendants.

6 In my view, in the light of the finding of fact recorded by the courts below, as also on the ground that the view taken by the Trial Court can be said to be a possible view in the facts and circumstances of the case, no case for exercise of the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7 At this stage, the Learned Counsel for the Petitioners prays that the decree may be not executed for sometime so as to enable the Petitioners to approach the Apex Court. In the facts and circumstances of the case, the decree not to be executed for a period of 8 weeks from date on the Petitioners filing the usual undertaking in this court within two weeks.

[R.M.SAVANT, J]