

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

WRIT PETITION NO. 3099 OF 2014

Smt.Saraswati Sadhashivan

... Petitioner

v/s

Sou. Mumbadevi Lalchand Ravat & ors.

... Respondents

Mr.R.B. Sawant i/by Robin Fernandes for the petitioner.

Ms.Sandhya Mailgir i/by Anil Joshi for Resp. Nos.1 and 2.

CORAM: N. M. JAMDAR, J.

DATED : 13TH APRIL, 2015

ORAL ORDER:

This is a petition by the petitioner challenging the judgment and decree passed by the Civil Judge, Junior Division, Thane, dated 20 September 2011 and the judgment and order passed by the District Judge, Thane, dated 26 September 2013, directing the eviction of the petitioner from the suit premises.

2. The suit was instituted by the respondent no.1 landlord for recovery of possession of Room No.5 of Sadabrij Saroj Chawl, Wagle Estate, Thane. The respondent's husband was the owner and landlord of the said chawl building. After the death of her husband, the respondent no.1 became owner of the chawl.

3. The respondent No.1 filed a suit bearing No.630 of 2014 before the Civil Judge, Junior Division, Thane, on the ground that the Respondent no.3, without any reasonable cause, was not using the premises for the last 10 years as he has acquired alternate accommodation and shifted from the suit premises. It was the case of the respondent No.1 that respondent No.3 (Defendant No.1) had sublet the premises in favour of the petitioner (Defendant No.2). On 15 February 2005, the suit was directed to be proceeded ex-parte as the respondent No.3 failed to appear in the Court. The petitioner filed the written statement and contested the claim. It was contended that the respondent No.3 was not the tenant of the suit premises and she was the tenant of the suit premises. The learned Civil Judge framed the issues. The learned Civil Judge held that the respondent No.3 unlawfully sublet the premises in favour of the petitioner and the petitioner failed to prove his status as a tenant of the suit premises. The learned Civil Judge accordingly decreed the suit by the judgment and decree dated 20 September 2011 and directed the petitioner to hand over the possession. The petitioner thereafter filed a civil appeal in the District Court, Thane. The District Court came to the conclusion that the respondent No.3 unlawfully sublet the premises to the petitioner without the consent of the respondent no.1. The learned District Judge accordingly confirmed the findings of the learned Civil Judge and dismissed the appeal by judgment and order dated 26 September 2013.

4 The decree has been passed on the ground of subletting by

respondent No.3 in favour of the petitioner. Both the Courts below have concurrently found that this ground stood established. In the evidence, the petitioner has not denied that the respondent No.3 was residing in the suit premises prior to her occupation. The learned Civil Judge has held that the petitioner admitted that the respondent No.3 was residing in the suit premises and the suit premises were let out to her through the respondent No.3. The learned counsel for the petitioner has assailed this finding by contending that there is no such admission in the written statement. However, the evidence of the petitioner needs to be considered in its entirety.

5 It is the case of the petitioner that the respondent No.3 left the suit premises in the year 1981 and she was in occupation of the suit premises since the year 1982. However she admitted that, when she came to reside in the suit premises, respondent No.3 was residing in it. She has also admitted that in the receipts at Exh. Nos.82 to 92, the name of the petitioner is appearing as a occupier and not as a tenant. She has further deposed that, prior to residing in the suit premises, she was living in the Mulund railway quarters ,which was surrendered in the year 1987. Both the Courts below analyzed this evidence and found that contradictory statements were made by the petitioner. It was her claim that she came in the suit premises in the year 1982, but she also said that she continued at Mulund till 1987.

6 The learned counsel for the petitioner has sought to contend

that the petitioner has not admitted that she has been put in possession by the respondent No.3. It is his contention that, she was only introduced to the premises by the respondent No.3. It is however not explained by the petitioner as to how,when and what circumstances the petitioner was introduced by the respondent No.3 . She has denied the suggestion that the respondent No.3 is her relative .

7. The learned District Judge has also considered letter at Exh.53 issued by Thane Municipal Corporation in which it is mentioned that when the suit was inspected, respondent No.3 was occupying it. The respondent No.3 is not related to the petitioner. If that is the position, the petitioner had to explain her presence thereafter in the suit premises. It was within her knowledge to prove this fact but she failed to adduce sufficient evidence thereof. There is nothing produced on record to show that the petitioner herself was tenant of the premises. Both the Courts found that it was the respondent No.3 who was a tenant and rightly drew a conclusion that the case of subletting was established. The re-appreciation of evidence by both the Courts below is not perverse so as to warrant interference under Article 227 of the Constitution of India.

8. The writ petition is accordingly rejected.

(N. M. JAMDAR, J.)