

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 259 OF 2015

Sosappa Poappa Kotiyan
(deceased through his legal heirs)
Ramkrishna Sosappa Kotiyan & Ors. .. Applicants
vs.
Bibi Ayesha Amir Saheb Bahauddin
& Ors. .. Respondents

Mr. Sachin Dhakephalkar for Applicants.
Mr. Sandesh D. Patil for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE : 31 JULY 2015

P.C. :-

1] This civil revision application challenges orders dated 9 April 2008 and 31 January 2015 made by the trial Court and the appeal Court directing the eviction of the applicants from out of the suit premises on the ground of unlawful subletting.

2] Mr. Sachin Dhakephalkar, the learned counsel for the applicants has submitted that the burden of establishing the factum of subletting was upon the respondent – landlord and this burden, the landlord has failed to discharge. The two Courts, have unduly shifted such burden upon the applicants and this constitutes an error of jurisdiction warranting interference under Section 115 of the CPC.

3] Mr. Sandesh Patil, the learned counsel for the respondent – landlord submitted that the respondent nos. 6 and 7 were found in possession of the suit premises. In such circumstances, the onus of explaining the status of such persons was upon the applicants original tenants. The two Courts, have concurrently and correctly held that the applicants failed to discharge such onus. Besides, the respondent nos. 6 and 7 who were found in possession of the suit premises neither bothered to file any written statement nor did they lead any evidence in the matter to explain the capacity in which they were occupying the suit premises. In such circumstances, there is absolutely no error of jurisdiction or otherwise in the making of the impugned orders.

4] Upon consideration of the rival contentions as well as the material on record, no case is made out to exercise the revisional jurisdiction and to interfere with the concurrent findings of fact recorded by the two Courts on the aspect of unlawful subletting. This is not a case where the initial burden was placed upon the applicants – tenants to establish that there was no unlawful subletting. The initial burden was upon the respondents landlords, which has been duly discharged by the respondents – landlords. The onus, thereafter shifted upon the applicants – tenants, which the applicants – tenants have failed to discharge.

5] The applicants had contended that defendant no. 2 was only a manager of the hotel business, which hotel business the applicants were carrying on through the suit premises. The two Courts have concurrently disbelieved the applicants. The two Courts have rightly held that the material on record establishes that for last several years the applicant was ill and had proceeded to native place at Mangalore. That apart, the applicants have failed to produce on record any licenses, permits etc. required for the purposes of carrying on hotel business through the suit premises in their name. There is absolutely no evidence produced except, oral statement in the course of deposition as to the status of the respondent nos. 6 and 7 qua the suit premises. The respondent nos. 6 and 7, who had been impleaded as defendant nos. 2 and 3 in the eviction suit have neither bothered to file any written statement nor lead any evidence to explain their status qua the suit premises. Parting with possession by the applicants in favour of the respondent nos. 6 and 7 stands established on the basis of material on record. In such circumstances, the initial burden cast upon the respondents landlords stands discharged. The onus then shifts upon the applicants tenants or for that matter the respondent nos. 6 and 7 to explain the basis upon which the respondent nos. 6 and 7 continue in possession of the suit premises. This onus has not at all been discharged by the applicants and respondent nos. 6

and 7. There is accordingly no jurisdictional error in the making of the impugned orders.

6] The Apex Court in the case of *Joginder Singh Sodhi vs. Amar Kaur*¹ has held that when the material on record establishes that the tenant has parted with the possession of the suit premises in favour of some other persons, it would not be for the tenant or such other persons to establish the capacity in which they occupy the suit premises, payment of rent or monetary consideration may have been made secretly and therefore the law does not require such payment to be proved by affirmative evidence.

7] This Court in the case of *Kamlakar Baban Rege vs. Radhakrishna Pundlik Saple*² has held that in order to prove subtenancy, the landlord has to establish that a person, other than the tenant is occupying the suit premises. Thereafter, it is for the tenant to explain about the status of the persons occupying the suit premises and the relationship with them. If the tenant fails to do so, an adverse inference can be drawn.

8] Similarly, in the case of *Gopal Krishnaji Ketkar vs. Mahomed Haji Latif & Ors.*³, the Apex Court has held that even if burden of

1 (2005) 1 SCC 31

2 267 Bom. R.C. 1986

3 AIR 1968 SC 1413

proof does not lie on a party, the Court may draw an adverse inference if the party withholds important documents in his possession which can throw light on the facts at issue. Further, once evidence is led by both the parties, the issue of burden of proof, recedes in the background.

9] For the aforesaid reasons, there is no case made out to interfere with the concurrent findings of fact recorded by the two Courts in the exercise of revisional jurisdiction under section 115 of the CPC. Civil revision application is dismissed. There shall be no order as to costs.

10] At this stage, Mr. Dhakephalkar applies for protection against eviction for a period of eight weeks. Subject to the applicants filing the usual undertaking within a period of two weeks from today, the eviction decrees shall not be executed for a period of eight weeks from today. Copy of undertaking to be furnished to the learned counsel for the respondents – landlords before the same is actually filed in the Registry.