

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 223 OF 2015

M/s. Mazada & Taylor	..	Applicants
vs.		
M/s. Mahavir Enterprises & Ors.	..	Respondents

Mr. B. K. Raja for Applicants.
Mr. Lalit V. Jain for Respondents.

CORAM : M. S. SONAK, J.
DATE: 22 JUNE 2015

P.C. :-

1] This civil revision application is directed against the following orders :

(a) Judgment and order dated 18 August 2008 made by the Small Causes Court, Mumbai in RAE & R Suit No. 319/542 of 2000;

(b) Judgment and order dated 13 March 2015 passed by the appellate bench of the Small Causes Court, Mumbai, in appeal no. 669 of 2008 confirming the aforesaid judgment and order dated 18 August 2008.

2] The two aforesaid judgments and orders direct the eviction of the applicants from the suit premises *inter alia* on the ground that the same were unlawfully sublet by the respondent no. 2 to the applicants.

3] Mr. B. K. Raje, the learned counsel for the applicants basically raised two grounds in support of the CRA.

(A) That the respondent no. 1 landlord in its application seeking eviction, had categorically pleaded that it was the owner and landlord of the suit property. There is no legal evidence on record in support of the pleading of ownership. The trial Court, has placed reliance upon an unregistered agreement of sale and some records of municipal council, which by no means, constitute documents of title or for that matter legal evidence. In the light of such categorical pleading, relying upon the decision of the Hon'ble Apex Court in the case of *A. V. G. P. Chettiar and Sons & Ors. vs. T. Palanisamy Gounder*¹, Mr. Raje contended that the respondent no. 1 could not have been permitted to fall back upon the definition of '*landlord*' under the Rent Act and on the said basis be granted a decree for recovery of possession. This according to Mr. Raje, is an error which goes to the root of jurisdiction;

(B) That in any case, the so-called sub tenancy was created prior to 1 February 1973 and therefore, the applicants are a protected tenant in so far as the suit premises are concerned.

1 AIR 2002 SC 2171

4] The second contention with regard to alleged protected tenancy, does not appear to have been raised at any stage of the proceedings. In this CRA as well, there is not even any ground to this effect. This issue, is not a pure question of law as urged by Mr. Raje. In such circumstances, there is no question of upsetting the impugned judgments and orders on basis of the second ground as aforesaid.

5] In so far as the first ground is concerned, in paragraph 1 of the plaint, the respondent no. 1 had pleaded that they are the owner and landlord of the suit property. Accordingly, this is not a case where the respondent no. 1 had instituted the proceedings on the sole basis of ownership. The decision in the case of *A.V.G.P. Chettiar & Sons* (supra), is clearly distinguishable. In the said case, the appellant, had consistently pleaded that the suit property belongs to a religious charitable trust and therefore the provisions of the Rent Act were not applicable to the suit premises. There was pleading on the part of the appellant that there was no relationship of tenant and landlord and in any case the denial of title was bonafide and consequently Rent Controller had no jurisdiction to try and determine the suit. In this context, the Hon'ble Apex Court at paragraph 42 held that given the nature of pleadings, the respondent could not be allowed to set up a different case and take shelter behind the definition of '*landlord*' under the Act concerned.

6] In the present case, as noted earlier, the pleadings of the respondent no. 1 are that they are owner and landlord of the suit property and consequently the suit premises. The applicants, in its written statement has merely denied the averment that the respondent no. 1 is the owner and landlord of the suit property or the suit premises. In such circumstances, there was really no occasion for going into the issue of ownership *per se*. The issues were cast on 18 July 2007 and the first issue was whether the plaintiffs i.e. the respondent no. 1 herein prove that they are landlords of the suit premises. It does not appear that the applicants applied for recast of such issue.

7] Accordingly, there is no merit in the first ground as raised by the applicants. The two Courts, have concurrently returned findings on the aspect of unlawful subletting. There is neither any perversity nor jurisdictional error in the record of such findings.

8] Accordingly, it cannot be said that the impugned judgments and orders are vitiated by any jurisdictional errors or that the two Courts, in the exercise of their jurisdiction have acted illegally or with any material irregularity. No case is therefore made out for interference in exercise of revisional jurisdiction. This CRA is consequently dismissed. There shall be no order as to costs.