

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

CIVIL REVISION APPLICATION NO. 351 OF 2015

WITH

CIVIL APPLICATION NO. 313 OF 2015

IN

CIVIL REVISION APPLICATION NO. 351 OF 2015

Shri Shantaram Babu Gottal

**.. Petitioner/
Ori. Defendant**

Versus

Dagdu Mahadev Kavitke & Ors.

**.. Respondents/
Ori. Plaintiffs.**

Mr. R.M. Kanojiya, for the Applicant.
Mr. Sandesh Deshpande, for the Respondents.

**CORAM : R.M. SAVANT, J.
DATE : 27th November 2015**

P.C. :

1. The revisionary Jurisdiction of this Court is invoked against the Order dated 12th March 2015 passed by the Learned District Judge -07, Thane, by which order, the Civil Appeal being No. 302 of 2012 filed by the Respondents No. 1 to 6 herein who are the

heirs of the original Plaintiff came to be allowed and resultantly the Judgment and Decree dated 9th July 2012 passed by the Trial Court that is the Learned 3rd Civil Joint Judge, Senior Division, Thane, in Regular Civil Suit No. 327 of 2004 came to be set aside and the Suit in turn came to be decreed and the Defendant was directed to handover the possession of the suit premises to the Plaintiffs within the time stipulated in the impugned order.

2. The Petitioner herein is the original Defendant whereas the Respondent Dagdu Mahadev Kavitke is the original Plaintiff and the Respondents No. 2 to 6 herein are the heirs of the original Plaintiffs. The Suit in question was filed for possession and compensation under the Maharashtra Rent Control Act, 1999 against the Petitioner herein. It was the case of the Plaintiff that he and one Pandu Gotawade jointly purchased Survey No. 16/3 admeasuring 1573 sq.yards in the year 1961 under a registered Sale Deed. It was further the case of the Plaintiff that the said Plot was partitioned on 7th July 1972 between him and the said Gotawade and the Plaintiff got half share in the said Survey 16/3 (Part) now bearing City Survey No. 66/2 admeasuring 466.55 sq.meter of which area he became the absolute owner. It is the case of the Plaintiff that as per the

Agreement dated 10th April 1984, the suit property was to be given to one Ramesh Jagannath Jadhav for development purposes pursuant to which a building was constructed in the year 1987 comprising of stilt and three floors. It was the case of the Plaintiff that since Gotawade was having a plot adjacent to the suit property bearing CTS No. 66/1 and since Gotawade was also intending to develop the suit property, and there were tenants causing obstruction to the development work being carried out. The said Gotawade requested the Plaintiff to accommodate 2-3 tenants in his property till his property was developed. It is therefore, the case of the Plaintiff that he accordingly allowed the mother of the Defendant Shantabai Gotal to construct a hut admeasuring 12 x 12 sq.ft. as by way of temporary licence. Since the development carried out by Gotawade was complete and since the Defendant is not ready to vacate the premises; therefore, the Suit in question came to be filed.

3. The said case of the Plaintiff was controverted by the Defendant by filing the Written Statement. It was the case of the Defendant in the Written Statement that his hut is in the middle of the property. Therefore, the developer requested him to move the hut towards the boundary. The developer Jadhav had agreed to give a

flat admeasuring 450 sq.ft to the Defendant. It is the case of the Defendant that believing the said word of the developer, he moved the hut towards the boundary of the said property. However, the developer has refused to give a flat to him and therefore, the Plaintiff if seems has joined hands with the said Jadhav to evict him from the suit property.

4. On the basis of the pleadings that the issues were framed. The parties went to trial. The Trial Court on the basis of the material on record came to a conclusion that the Defendant was a tenant in the suit property and was not a licensee as sought to be contended by the Plaintiff and therefore, dismissed the Suit. It is required to be noted that in the Trial Court though it was the case of the Defendant that his mother was in the property since the year 1965 and thereafter, he himself from the year 1980, no rent receipt was produced by the Defendant, though it was his case that his mother paid the rent and that he has also paid for the period from 1980 to 1984. It is also required to be noted that the Defendant has accepted the fact that he could have paid the rent by sending the same by money order, but no such evidence was placed on record.

5. The Plaintiffs that is the heirs of the original Plaintiff, as

the original Plaintiff had by then expired, filed an Appeal bearing Appeal No. 302 of 2012. As noted above, the said Appeal came to be allowed by the learned District Judge – 07, Thane on 12th March 2015. The learned Judge has found fault with the dismissal of the Suit by the Trial Court on the ground that in the absence of any material produced by the Defendant to show that he was a tenant of the property in question, the Trial Court has erred in coming to the conclusion that the Defendant was a tenant. The lower Appellate Court has also recorded a finding that the Trial Court has laid undue emphasis of the Court Commissioner's report. The lower Appellate Court held that the onus was on the Defendant to establish his possession as a tenant of the property in question, however, he has failed to do so. The lower Appellate Court has therefore, deemed it appropriate to upset the order passed by the Trial Court and has accordingly, set aside the order of the Trial Court and has in turn decreed the Suit.

6. Having heard the learned Counsel for the parties, in my view, the lower Appellate Court has rightly set aside the Decree of the dismissal passed by the Trial Court, as the Trial Court had laid undue emphasis on matters which are not germane insofar as issue of

tenancy is concerned, in that way of the matter no case for exercise of the revisionary jurisdiction is made out. The Civil Revision Application is accordingly, dismissed.

7. In view of dismissal of the Civil Revision Application, the Civil Application does not survive and to accordingly, stand disposed of as such.

[R.M. SAVANT, J.]