

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

CIVIL REVISION APPLICATION NO.920 OF 2014

Yeshwant Sitaram Kalap

.. Applicant

Versus

Krishna Sitaram Kalap and others

.. Respondents

Shri. Harish H. Pawar, for the Applicant.

Shri. V. Y. Sanglikar, for the Respondent No.1.

Shri. Tushar Dahibawkar i/by M/s. Dahibawkar & Co., for the Respondent No.4.

CORAM : R.M. SAVANT, J.

DATE : 27th FEBRUARY, 2015

PC.

1. The above Civil Revision Application is directed against the order dated 29th March, 2014 passed by the Learned Judge, City Civil Court, Greater Mumbai, by which order the Trial Court has ruled on the preliminary issue and held that it is having the jurisdiction to try and entertain the suit.

2. The suit in question being SC Suit No.7597 of 2004 filed by the Plaintiff i.e. Respondent No.1 herein against the Defendant for a declaration that the Plaintiff is entitled for allotment and possession of the suit flat in lieu of the tenement in the old Rangari Chawl and entitled for

alternative accommodation and for an injunction against the Defendant restraining the Defendant from obstructing the Plaintiff from occupying from Flat No.409 allotted to the Defendant No.1 in lieu of the old Room No.18 of the old Rangari Chawl. The Petitioner herein is the original Defendant No.1, where as the Respondent No.1 herein is the original Plaintiff. The Plaintiff and the Defendant No.4 are brothers and their father one Sitaram Kalap was the tenant of the old Room No.18 of the old Rangari Chawl. Deceased Sitaram Kalap died pursuant to which his wife was the tenant of the room and on the demise of wife of the deceased Sitaram Kalap, it is the case of the Defendant No.4 that he is in occupation of the tenanted premises. It appears that the property, wherein the room was situated was declared as a slum under the Slum Act. It is thereafter that a Slum Redevelopment Scheme under Regulation 33(10) was undertaken. Pursuant to the said redevelopment, the property is redeveloped and at present flat No.409 has been allotted to the Defendant No.4 in lieu of the room in old Rangari Chawl. The said flat No.409 is the bone contention between the two brothers. The Plaintiff claims that he is entitled to the joint allotment and possession of the said flat No.409 along with Defendant No.4. However, it is the case of the Defendant No.4 that since he was the occupant on the cut of date i.e. 01.01.1995 and since his name is appearing in Annexure-II prepared by the Deputy Collector and

Competent Authority, it is he who is entitled to the exclusive possession of the suit flat. In the light of the reliefs which were sought by the Plaintiff that the Defendant No.4 raised the issue of the jurisdiction of the City Civil Court to try and entertain the suit on the touchstone of Sections 35 and 42 of the Slum Act. The Learned Judge of the City Civil Court adjudicated upon the said issue and ruled that the said Court is having jurisdiction to try and entertain the suit. The gist of the reasoning of the Learned Judge is that the dispute raised in the suit does not fall within the realm of the Slum Act and since it is a Civil dispute between the parties, it would have the jurisdiction to try and entertain the suit. The Trial Court has relied upon the judgment of the Learned Single Judge of this Court reported in **2013(4) Mh.L.J. 175** in the matter of **Ashok B. Nigudkar Vs. Sudhadra. P Nirgudkar and others.** The facts in the said case seem to be identical to the facts of the present case. The Trial Court had rejected the plaint on the ground that the suit as filed for a identical relief in the present suit was not maintainable. The Learned Single Judge of this Court came to a conclusion that the dispute between the parties is of a civil nature and does not fall within the scope of the Competent Authority, Tribunal or the Grievance Redressal Committee, therefore, the suit as filed was maintainable. In my view, having regard to the facts involved in the present case, the judgment of the Learned Single Judge in Ashok B.

Nigudkar's case (*Supra*), would apply on all fours to the facts of the present case. Hence, the Trial Court has committed no error of jurisdiction in coming to a conclusion that it has the jurisdiction to try and entertain the suit. The exercise of Revisionary Jurisdiction is therefore not warranted. The Civil Revision Application is accordingly dismissed. However, the hearing of the suit is expedited.

[R.M. SAVANT, J]