

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

CIVIL REVISION APPLICATION NO.738 OF 2015

Mrs. Maya Rajendra Kulkarni

.. Applicant

Versus

Shri. Jaibhagwan Ramchandra Agarwal

alias Gupta and another

.. Respondents

Mr. S. C. Wakankar, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 14th DECEMBER, 2015

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the order dated 04.04.2015 passed by the Learned Principal District Judge, Pune, by which order the Appeal filed by the Petitioner herein being Civil Appeal No.2 of 2011 came to be dismissed and resultantly, the judgment and order dated 28.09.2010 dismissing the suit being Regular Civil Suit No.198 of 2001 came to be confirmed. The suit in question being Regular Civil Suit No.198 of 2001 was filed for eviction and was founded on two grounds namely nuisance and annoyance and subletting. The ground of nuisance was sought to be invoked on the basis that the Defendant No.1 was using the open space in front of the shop and thereby causing nuisance and annoyance to the Plaintiff. It was the case of the

Plaintiff that the Defendant used to throw dirt on the way leading to her house and also misuse the toilet and bathroom. The ground of subletting was invoked on the basis that the Defendant No.1 had sublet the suit premises to the Defendant No.2 and earning profit of Rs.10,000/- per month. The parties led evidence in respect of the said two grounds. It was the case of the Plaintiff that the Defendant No.1 was given a lease of the premises in question which was executed in the year 1964 however the said document was not produced on record. The Trial Court on the basis of the material on record and especially the admissions of the Plaintiff came to a conclusion that the Plaintiff has not made out any case of nuisance and annoyance by the Defendant as also on applying the tests laid down in so far as subletting is concerned came to a conclusion that the Defendant No.1 cannot be said to have sublet the premises. The Trial Court by judgment and order dated 28.09.2010 accordingly dismissed the suit.

2. The aggrieved Plaintiff carried the matter by way of Appeal being Civil Appeal No.2 of 2011. The Lower Appellate Court on a reconsideration of the material on record did not find any reason to differ with the findings recorded by the Trial Court in respect of the said two grounds. The Lower Appellate Court held that the Plaintiff has utterly failed to prove that the Defendant damaged the suit property and thereby

caused nuisance and annoyance to the Plaintiff. In so far as the ground of subletting is concerned, the Lower Appellate Court by referring to the judgments cited on behalf of the Respondent/original Defendant held that the tests laid down in the judgments cited on behalf of the Respondent in the instant matter were not satisfied as no evidence was placed on record to show that the Defendant No.1 has sublet the premises to the Defendant No.2 on rent. The Lower Appellate Court held that the Shop Act licence produced by the Defendant No.1 shows that the Defendant No.1 runs grocery business which falsifies the case of the Plaintiff that the Defendant No.1 has sublet the premises. The Learned Counsel appearing on behalf of the Civil Revision Applicant would reiterate the case of the Applicant in the Courts below and would contend that since admittedly the open space in front of the shop was not leased to the Defendant No.1 the Courts below had erred in coming to a conclusion that the Defendant No.1 had not committed nuisance. In my view, it is not possible to accept the said contention urged on behalf of the Applicant. In the light of the findings of fact recorded by the Courts below on the said two aspects, no case for exercise of the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]