

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 856 OF 2014

Nirmal Singh Bahadur Singh Hanspal
through Power of Attorney
Kantilal (Kanti) Bhanudas Waghmare & anr. .. Applicants.
vs.
Mohammad Shafi Sheikh Abdul Rehman .. Respondent

Mr. T.N. Sonawane for the Applicants.
Mr. A.S. Khandeparkar i/b Khandeparkar & Associates for the
Respondent.

CORAM : M. S. SONAK, J.

DATE : 10 JUNE 2015.

P.C. :-

1] This Civil Revision Application is directed against the
following orders :

(a) Judgment and order dated 14 December 2012 made by
the Joint Civil Judge, Senior Division, Thane in Regular Civil
Suit No. 63 of 2009;

(b) Judgment and order dated 20 May 2014 made by the
District Judge-10, Thane in Civil Appeal No. 70 of 2013.

2] By the aforesaid impugned judgments and orders (impugned
orders), the applicants have been ordered to be evicted from the suit
premises, on the grounds that applicant No.1 has illegally and
without consent of respondent sublet the suit premises to applicant
No.2.

3] Mr. Tushar Sonawane, learned counsel for the applicants assailed the impugned orders by submitting that the Trial Court as well as Appeal Court have gone by the so called admission in the deposition of applicant No.1 to the effect that the applicant No.1 had indeed sublet the suit premises to applicant No.2 illegally. Mr. Sonawane submitted that if the entire deposition of applicant No.1 is perused and construed, it is evident that the record of the so called admission is a result of clerical error. In the examination-in-chief as well as in the entire cross-examination of applicant No.1, the said applicant No.1 has asserted that there was neither any sale nor subletting of the suit premises by applicant No.1 in favour of applicant No.2.

4] Mr. Sonawane further submitted that applicant No.1, by means of written document has proposed the sale of suit premises to applicant No.2. This was with the consent of the respondent-landlord. However, since the respondent-landlord backed out, the same did not go through and applicant No.1 continued in the suit premises as its lawful tenant. Mr. Sonawane submitted that inasmuch as this aspect, which is clearly borne out from the evidence on record, has not been appreciated by the Trial Court as

well as Appeal Court and the two Courts have, in the exercise of their jurisdiction, acted illegally and with material irregularity.

5] Having heard the learned counsel for the parties and perused the materials on record, in my judgment, there is no case made out to interfere with the concurrent findings of fact recorded by the two Courts to the effect that applicant No.1 has indeed unlawfully sublet the suit premises to applicant No.2.

6] Even if, the so called admission on the part of applicant No.1 is ignored, the rest of deposition of applicant No.1 makes it clear that applicant No.1 has put applicant No.2 in possession of the suit premises. In the examination-in-chief of applicant No.1, the said applicant has admitted that the licence from the shop and establishment authority stands in the name of applicant No.2. Same is the position with regard to Electricity Meter, which is also in the name of applicant No.2. In such circumstances, it was for applicant No.1 to explain the precise capacity in which applicant No.2 is found to be in possession of the suit premises of which applicant No.1 was the tenant. No such explanation is forthcoming. There is absolutely no evidence in support of the contention that the suit premises were

agreed to be sold by applicant No.1 to applicant No.2 with the consent of respondent-landlord. There are serious inconsistencies inherent in the deposition of applicant No.1. Therefore, even if the so called admission regards unlawful subletting is excluded from consideration, the same does not cause any considerable dent to the case of the respondent-landlord on the aspect of unlawful subletting the suit premises.

7] Significantly, applicant No.2 who is found to be in possession of the suit property has not chosen to tender any evidence. In such circumstances, it cannot be said that the findings of fact concurrently recorded by the two Courts suffer from any perversity or that the same are contrary to the weight of evidence on record.

8] In my judgment, this is not a case where the impugned judgments and orders can be said to be vitiated by either illegality or with material irregularity, so as to warrant the exercise of revisional jurisdiction. Accordingly, present revision application is liable to be dismissed and is hereby dismissed.

9] In the facts and circumstances of the present case, there shall be no order as to costs.

10] At this stage, learned counsel for the applicants seeks protection from eviction for a period of eight weeks from today, as the applicants seek to take recourse against this order. Accordingly, subject to the applicants and adult members from their family filing the usual undertaking in the Registry of this Court within a period of one week from today, the impugned judgments and orders shall not be executed for a period of eight weeks from today.

11] The copy of undertaking to be served upon the learned counsel for the respondent within a period of one week from today.

(M. S. SONAK, J.)

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