

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 328 OF 2015

Jaysukhlal J. Adodra & Ors.	..	Applicants
vs.		
The Trustees Seth Zaverchand Nursery Porbunder Famine Relief Fund & Ors.	..	Respondents

Mr. J. J. Thakkar for Applicants.
Mr. A. G. Damle – Senior Advocate for Respondents.

CORAM : M. S. SONAK, J.
DATE : 27 AUGUST 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] This CRA is directed against the judgment and order dated 26 July 2013 made by the Division Bench of the Small Causes Court (Appeal Court) only to the extent it makes certain adverse observations against the applicants with regard to the issue of 'terrace'.

3] The applicants, instituted RAD Suit No. 2281 of 1993 and in paragraph 2 thereof, the suit premises were described as "*entire 5th floor consisting of 5 rooms*". There was no reference to any terrace

in the plaint. The substantive reliefs prayed for in the plaint read thus:

“(a) The Defendants be issued direction to issue rent in the name of the Plaintiff correctly stating therein as 5th floor or “Rom No. 61 i.e. “5th floor” as being stated by the Defendant No. 1 earlier;

(b) The Defendants herein be restrained by an Order and Injunction of this Hon'ble Court from selling, disposing, alienating, transferring the said building called Sudama Niwas, 58/62, Bora Bazar Street, Fort, Bombay – 400001, where the suit premises is situate, without issuing fresh rent receipt / correcting the old rent receipt by stating therein “5th floor” or “Room No.61 i.e. 5th floor”;

4] The Trial Court, dismissed the applicants suit. However, the Appeal Court, by judgment and order dated 26 July 2013, has allowed the applicants appeal, set aside the judgment and decree made by the Trial Court and further directed the defendant no. 2 in the suit to issue rent receipts in respect of the suit premises, in future, describing the suit premises as '*Room no. 61 i.e. 5th floor*'.

5] From the aforesaid, it is quite clear that the applicants suit has been decreed in terms of prayer clause (a) of the plaint. As noted earlier, in the plaint there was no reference to '*terrace*'. In these circumstances, there was really no occasion for either the Trial Court or the Appeal Court to make any observations in the

context of '*terrace*'. The observations therefore, are expunged. The issue of '*terrace*' is therefore, excluded from the determination made by the two Courts. The issue is however left open for agitation by both the parties. It is made clear that even this Court has obviously not gone into the issue of the terrace and therefore all contentions of all parties in this regard are kept specifically open.

6] Rule is accordingly made absolute to the aforesaid extent only. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka