

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

CIVIL REVISION APPLICATION NO. 1164 OF 2014

Govind Babar (Since deceased)
Through L.Rs. and Anr.

..Applicants

Vs.

Siyaram G. Gupta

..Respondent

....
Mr. P.G. Karande, Advocate for Applicants.
Mr. Anil Mishra, Advocate for Respondent.

....

***CORAM : N.M. JAMDAR, J.
DATED : 31 MARCH 2015***

ORAL ORDER:

By this application, the applicant challenges the judgment and decree dated 19 April 2007 passed by the Small Causes Court, Mumbai in RAE Suit No. 80/2002 and the order dated 14 October 2014 passed by the Appeal Bench of the Small Causes Court in Appeal No. 374/2007. By the impugned judgment and decree, the Applicant has been directed to vacate the premises in their possession.

2. The Applicant-original Defendant was a tenant of the respondent-landlord. The respondent filed a suit in the Small Causes Court seeking possession of the suit premises, which is a room situated at Gangadin Matadin Chawl, Sonapur Lane,

Hanuman Wadi, Kurla (W), Mumbai. The respondent alleged that the petitioner had carried out permanent construction without the permission of the respondent and that the respondent requires property for themselves in view of their bonafide and reasonable requirement. The applicant filed his written statement and resisted the suit. The learned Small Causes Court Judge framed issues as regard the permanent construction and bonafide requirement. Both the parties led their evidence, oral as well as documentary. The learned Small Causes Court Judge held that the applicant carried out permanent construction of the first floor and also encroached on the open space. Accordingly, by the judgment and decree dated 19 April 2007, the learned Small Causes Court Judge decreed the suit and directed the applicant to hand over the possession. Thereafter the applicant filed appeal before the Appeal Bench of the Small Causes Court, Mumbai. The Appeal Bench confirmed the finding as regard the permanent construction and dismissed the appeal by order dated 14 October 2014. These orders have been challenged in the present Revision Application.

3. It is the contention of the respondent-landlord that the applicant has encroached on 10 ft. x 12 ft. open land in front of the suit premises by putting up construction of bricks masonry wall and has constructed a first floor in the suit premises and has replaced the roof which was earlier of masonry wall to A.C. sheets. Both the Courts assessed the evidence, more particularly, the cross

examination of D.W. 2 i.e. the Applicant No.2. Both the Courts found that height of the ground floor is 6 feet and one which is constructed is 6 feet and there is an stair case from inside.

4. It is the contentions of the learned Counsel for the Applicant that the said construction is made with the oral permission of the landlord. Both the Courts have rightly held that there was no evidence as regards the permission either oral or written. There is no evidence placed on record to show that when the premises were given to the applicants, they were in the present state. The learned Counsel for the applicant submitted that both the Courts have not considered the nature of the construction and also whether the construction has eroded or the value of premises has enhanced. Construction of an entire floor is a permanent construction. Constructing a floor within the premises of with the height of 13 feet, cannot be considered as adding the value to the premises.

5. Therefore taking overall view of the matter, there is no perversity or error of jurisdiction in the finding rendered by both the Court. The Revision Application therefore cannot be considered and is rejected.

6. The learned Counsel for the applicant seeks continuation of the interim order granted by this Court. The interim order

granted by this Court on 22 December 2014 is extended for a period of eight weeks from today. This, however, is upon the statement of the learned Counsel for applicant that the applicants alone are in possession of the property and they will not create any third party rights in the suit premises. The statement is accepted.

(N.M. JAMDAR, J.)