

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 135 OF 2016
WITH
CIVIL APPLICATION NO. 11256 OF 2016

1. Smt. Chamelibai Wd/o Motiram Bauskar
Age : 73 years, occup. Household

2. Kamalabai Baliram Tayade,
Age 48 years, occup. Household,

Both resident of Khushalbhou Road,
Post Faizpur, Tq. Yawal, Dist. Jalgaon,

3. Vimalbai Sukhdeo Kakade,
Age 53 years, occup. Household,
R/o Kiran Niwas, Lal Chakki Road,
Ulhasnagar, Tq. Kalyan, Dist. Thane

4. Lilabai Bhagwat Sonwane	.. Applicants
Age 47 years, occup. Household,	Original
R/o Resalpur, Tq. Raaver, Dist. Jalgaon	Defendants

versus

1. Anil s/o Laxman Wade, Age 51 years, occup. Service and Business, R/o Faizpur, Tq. Yawal, Dist. Jalgaon	.. Orig. Plaintiff
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2. Supdu Motiram Bauskar,
Age 51 years, occup. Service,
R/o Subhash Chowk, Faizpur,
Tq. Yawal, Dist. Jalgaon
3. Sarlabai Subhasg Tayade,
Age : major, occup. Household,
R/o Macchi Market, Diva,
Navi Mumbai
4. Sakhubai Bhaskar Savkare,
Age 44 years, occup. household,
R/o New Area Wawrd,
Near Tuljapur Nivasini, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
5. Latabai Jagan Nimbhore, .. Respondents/
Age 45 years, occup. Household, Respondents no.2
R/o Azad Nagar, Khairati Bazar, to 5 are orig. Defts.
Barhanpur (M. P.)

Mr. S. B. Bhapkar, Advocate h/f Mr. K. B. Jadhav, Advocate for applicants
Mr. Sanket S. Kulkarni, Advocate for respondent no. 1-caveator

CORAM : SUNIL P. DESHMUKH, J.
DATE : 23rd November, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties by consent, finally.

2. A brief reference to the antecedents of the matter would facilitate appreciation of controversy in proper perspective.

3. Suit property had been purchased by one Onkar Mahajan under a registered sale deed dated 15-11-1945 from one Sonu Ragho Chambhar. After said purchase, Sonu had resided in said property as tenant of the purchaser - Onkar Mahajan. The rent agreed had been at Rs.15/- per month. Sonu died. Upon death of Sonu, his son Motiram became tenant of suit property. There had been defaults in payment of rent, and he had fallen in arrears of rent. Hence, Onkar had instituted suit against Motiram bearing regular civil suit no. 93 of 1983 seeking recovery of arrears of rent and vacant possession of suit premises. The suit was decreed and Motiram was directed to hand over vacant possession. Motiram died in 1992.

4. Present respondent no. 1 purchased suit property from sons of Onkar Mahajan under a registered sale deed dated 11-10-2004. Upon purchase, notice of attornment had been issued by respondent no. 1 on 11-10-2005 to wife and son of Motiram and had demanded rent from them, however, they did not pay the same. Thus, respondent no. 1 issued notice on 03-02-2007 to defendants no. 1 and 2 demanding rent from them. However, no rent had been tendered in spite of service of notice.

As such, notice terminating tenancy was issued and present suit bearing regular civil suit no. 67 of 2007 had been instituted by respondent no. 1 against the wife and son of deceased Motiram, praying for their eviction and vacant possession of suit property along with arrears of rent of Rs.1,380/- and further sums Rs.180/- totalling Rs.1,540/- [Rs.1,560] from defendants.

5. Defendants no. 1, 2, 4 and 5 filed their written statement. Defendants no. 6 and 7 adopted the same by filing *pursis*. Defendants resisted the suit claim. They denied that the suit property had been purchased from deceased Sonu and that Sonu was tenant of Onkar in suit property on rent at the rate of Rs.15/- per month. They denied that suit by Onkar was decreed, directing Motiram to handover vacant possession. They denied relationship between them and the plaintiff to be as landlord and tenants. They submitted that false notices were issued to them on 11-10-2005 and 03-02-2007 and had given genuine replies to the notices. According to defendants, they had been in suit property since several generations as owners openly, peacefully and to the knowledge of the plaintiff and as such became owners of the property by adverse possession and prayed for dismissal of the suit.

6. With reference to aforesaid pleadings, issues came to be framed by trial court viz; whether the plaintiff proved defendants

1 and 2 to be his tenants on monthly rent at Rs.15/-, whether the plaintiff proved that said defendants failed to pay agreed rent, whether he proved that they are habitual defaulters and whether the defendants are in arrears of rent.

7. In evidence, the plaintiff entered witness box and had produced certified copies of the sale deeds, certified copies of city survey record, notice of attornment and notice demanding possession, original sale deed in favour of the plaintiff and certified copies of the judgment and decree in the earlier regular civil suit no. 93 of 1983 filed by Onkar Mahajan, and the order passed in C. M. A. No. 14 of 1992.

8. Defendants examined Supdu Motirm -defendant no. 2 and Kamalabai Tayde – defendant no. 4 and had not produced any documentary evidence.

9. Upon appreciation of evidence, the trial court considered that although it is the contention of the defendants that the relationship of the landlord and tenant cannot be said to be subsisting between the plaintiff and the defendants, it cannot be denied that Onkar Mahajan was the owners of the suit property and from his heirs the property has been purchased by the present plaintiff and subsequent to said purchase notice of attornment had been issued and served on the defendants, so also notice demanding arrears of rent and possession had been

served on the defendants. The trial court has taken into account that a decree for eviction against defendants had been passed in earlier suit instituted by Onkar Mahajan referred to hereinbefore and further that the defendants have not been able to place anything on record indicating that said decree had been set at naught in some proceedings although the contentions have been advanced in that respect. The trial court has also found that the plaintiff has been able to establish the defendants having fallen in arrears and have failed to tender rent at the rate of Rs.15/- per month. The trial court deduced that there is failure on the part of defendants to comply with requirements under section 15 of the Maharashtra Rent Control Act.

10. The trial court answered all the issues in the affirmative in favour of the plaintiff and thus granted decree of eviction and recovery of possession under judgment and order dated 25-03-2013.

11. While similar contentions as in defence the suit, had been canvassed in proceeding against the decree by present applicants-defendants bearing regular civil appeal no.517 of 2014 (old regular civil appeal no. 125 of 2013), the appellate court also found no substance in the appeal and dismissed the same on 12-02-2016.

12. Learned counsel Mr. Bhapkar appearing on behalf of the applicants – defendants contends that since the landlord-tenant relations between the parties cannot be said to have been established, the whole proceedings have become redundant and as such should have resulted into dismissal. He submits that there is no material placed on record showing that the defendants had ever accepted the plaintiff to be their landlord. He further submits that no evidence has been led by the plaintiff to show and establish the relationship of landlord and tenant between the plaintiff and defendants. The plaintiff has no corroboration to his evidence whereas, the defendants have adduced evidence of two persons, denying plaintiff's claim. Alternatively, Mr. Bhapkar further submits that earlier proceedings initiated by Onkar Mahajan were also on the ground of default and since those proceedings have been decided, the present proceedings shall be deemed to have been hit by doctrine of *res-judicata*. He, thus, purports to contend that the judgments and decrees rendered by the two courts hitherto are untenable and civil revision application accordingly deserves to be allowed.

13. Mr. Sanket Kulkarni, learned counsel appearing on behalf of respondent no.1-plaintiff counters aforesaid submissions, referring to that it is not a case wherein it can be said that no

relationship of landlord and tenant had come into subsistence between the parties. He submits that the defendants have been taking vacillating stands. On one hand, they claim to be owners and on the other, they purport to deny the decree against them having been passed in earlier round of proceedings and, it is now being contended for the first time at this stage that the present proceedings would be hit by doctrine of *res-judicata*. He submits that there is more than sufficient evidence on record supporting plaintiff's case. The registered as well as original sale deeds have been placed on record, so also notice of attornment and of its' service on defendants, as also of notice issued in 2007 demanding arrears of rent and vacant possession. Moreover, he submits, although it is solitary evidence of the plaintiff, yet fact remains that the same could not be impeached by defendants in any way.

14. After having heard learned counsel for the parties, it will have to be taken into account that though it is being contended on behalf of the applicants – defendants that it cannot be said that there is landlord-tenant relationship between the parties, yet there is sufficient record made available by the plaintiff in the shape of sale deed in 1945 from the owner of the property to Onkar Mahajan and of sale by heirs of Onkar Mahajan, the notice of attornment of tenancy issued by plaintiff to defendants, as also notice demanding arrears of rent and vacant possession.

15. Aforesaid, shows successive transactions with respect to the property have been established by the plaintiff, so is the case on tenancy being attorned. Apart from this, Onkar Mahajan from whom the property has been purchased by the plaintiff had initiated proceedings against the defendants and had succeeded in seeking the decree of eviction against the defendants. On this background, the purchase made by the plaintiff and notice of attornment having been served on defendants unquestionable, there is no substance in the contention of defendants about non existence of relationship of landlord – tenant between the plaintiff and defendants. Both the courts have found that in spite of notice having been served pursuant to the provisions of section 15 of the Maharashtra Rent Control Act, there had been no tender at all of rent by defendants and have found that the defaults have been established and there is no compliance of requirements under section 15 of the Maharashtra Rent Control Act. Although it is being contended that the proceedings are hit by doctrine of *res-judicata*, default being recurring cause, there is no substance in the same.

16. In view of aforesaid, it does not appear to be a case wherein findings and the decisions rendered hitherto by the courts can be impeached on any ground.

17. Needless to refer to that under the revisional powers of the court, unless the courts below commit gross error in decision making, the decision seldom is liable to be interfered with. In view of the same, civil revision application is not being entertained and is dismissed. Rule stands discharged.

18. At this stage, learned counsel Mr. Bhapkar requests to grant reasonable time for vacating the suit premises, submitting that applicant no. 1 is an old lady and has been staying in suit premises from a long time. Learned counsel Mr. Kulkarni has reservations over the same.

19. However, looking at the request is being made for a reasonable period for vacating suit premises, I deem it appropriate to grant six months time from today to the applicants-defendants to vacate suit premises, on the condition that the applicants shall file withing twenty one days from today an undertaking to this court that they would vacate the suit premises peacefully, without damages to the same in any way, would deliver possession of suit property to the plaintiff without creating hurdles and obstacles and without creating third party interest of whatsoever nature in the suit premises and in whatsoever manner. They shall further undertake that they would keep on paying compensation to the plaintiff at the rate of

Rs.15/- per month, till vacating the suit premises which shall happen within a period of six months from today. In case of default in filing such an undertaking, protection of six months as aforesaid shall stand vacated without reference to the court and it would be open to the plaintiff to go ahead with the execution.

20. Civil application does not survive and stands accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

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