

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application No. 35 OF 2016

P.CHELLAKAN RAJU

...Applicant

Versus

MISS ROHINI KUNDANLAL GUPTA
AND ORS

...Respondents

....

Mr.Satish S. Raut, Advocate for the Applicant.

Mr. V.P. Sawant a/w. Ms. Harshal Manik i/b. Rustamji &
Ginwala, for Respondent Nos.1 & 2.

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CORAM : R. G. KETKAR, J.

DATE : 1st FEBRUARY, 2016

P.C.

1. Heard Mr. Satish Raut, learned Counsel for the applicant and Mr.V.P. Sawant, learned Counsel for respondent Nos.1 and 2, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicant has challenged the judgment and decree dated 30.8.2012 passed by learned Judge, presiding over in Court Room No.15 of the Small Causes Court at Bombay in RAD / RAE Suit No.979/1993 as also the judgment and decree dated 11.12.2015 passed by the Appellate

Bench of the Small Causes Court at Bombay in RAD Appeal No.58 of 2012. By these orders, the Courts below partly decreed the Suit instituted by respondent Nos.1 and 2 hereinafter referred to as the 'plaintiffs' and declared that original defendant No.1 Dina E. Billimorya was the only surviving heir of the original tenant Ms.Banoobai E. Billimoria, since deceased, living with said original tenant at the time of her death in flat No.4, first floor, Oceana, 214-Netaji Subhas Road, Marine Drive, Mumbai-20 and a garage on the ground floor (for short, 'suit premises') as contemplated under Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act') and that no one else is entitled to the tenancy rights in respect of the suit premises. The Courts below further declared that original defendant no.1 was not entitled to assign, transfer, sub-let, give on leave and licence basis, part with possession, alienate or induct any third party into the suit premises in contravention of the provisions of the Bombay Rent Act and Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). The Courts below appointed Court Receiver Mr. V.D. Kavatkar. The Court Receiver was directed to deliver vacant possession of the suit premises to the plaintiff

within two months. The Court Receiver was directed to deliver the articles in the suit premises to defendant Nos.1(a) to 1(c) as per inventory. The applicant, hereinafter referred to 'defendant No.2', was directed to deliver vacant possession of the garage situate on the ground floor which is part of the suit premises within two months.

3. Mr. Raut submitted that initially the plaintiffs have instituted the suit in the year 1993 for declaration that the original defendant No.1 Dina E. Billimoria was the only surviving heir of the original tenant Ms. Banoobai E. Billimoria. In the year 2006, the plaint was amended and defendant No.2 is impleaded as a party defendant. As far as defendant No.2 is concerned, only controversy between the parties is whether he is sub-tenant of the deceased defendant in the garage situate on the ground floor. He submitted that defendant no.2 has produced voluminous documents on record to substantiate his plea that he occupied the garage on the ground floor prior to 1.2.1973 and, therefore, he became a protected tenant. He has taken me through the impugned orders and submitted that the Courts below failed to appreciate that defendant no.2 has

established his possession in the garage prior to 1.2.1973. However, the Courts below discarded the documents on the ground that they are post 1.2.1973. As far as driving licence is concerned that was issued on 6.7.1972 and the address on that driving licence was of the garage on the ground floor. In other words, driving licence which is produced at Exhibit-72 clearly establishes case of defendant No.2 that he is occupying the garage prior to 1.2.1973. He, therefore, submitted that the impugned orders deserve to be interfered with.

4. Mr. Raut further submitted that defendant No.2 has instituted a declaratory suit being RAD Suit No.1552 of 1998 declaring status of defendant No.2 as a tenant. Said suit was filed inter alia for declaration that he is a tenant in respect of room NO.4, ground floor, Oceana, 214-Netaji Subhash Road, Marine Drive and for perpetual injunction restraining the respondents (the defendants therein) from using and occupying said room. He submitted that any order that may be passed in this application, will adversely affect the said proceedings.

5. On the other hand, Mr. Sawant supported the impugned orders. He submitted that after appreciating the

evidence on record, the Courts below have concurrently held that the defendant No.2 failed to establish that he was occupying the garage prior to 1.2.1973. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of CPC. He further submitted that averments made in the suit instituted by defendant No.2 herein and the defence set up in the present suit is on identical lines. He submitted that defendant No.2 claims to be in possession of the garage prior to 1.2.1973.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record.

7. The short question is whether defendant No.2 has established that he was inducted in the garage prior to 1.2. 1973 and as such he became a protected tenant thereof. In order to establish this case, defendant No.2 has produced ration card at Exh.57, birth certificate of his daughter at Exh.58, identity card issued by Election Commission of India at Exh.59, letter received by defendant No.2 showing his address at Exh.60, electricity bill received by defendant No.2 herein showing his address at Exh.61. After considering these documents, it was noted that all

the documents are pertaining to the year after 1973 onwards. The only document on which the defendant No.2 relied is the driving licence which is of the year 1972. Defendant No.2 contended as also deposed that the address of defendant No.2 is shown to be that of the garage and same was issued on 6.7.1972. In other words, defendant No.2 wanted to establish that he is residing in the garage from 6.7.1972. However, during the cross-examination he admitted that he received above licence in the year 1972 and his address in the licence was of some place other than the garage and after coming to the garage he got the address changed. He further admitted in clear terms that he got the address changed at the time of renewal of licence and initially the licence was issued for the period of 10 years, meaning thereby that it was in force upto 1982. This license was renewed in the year 1982 and at that time defendant No.2 changed the address in the licence as that of the garage. The Courts below and in particular the appellate Court has recorded a finding on it in para-15 and observed that prior to the renewal of the licence in the year 1982, the address shown in licence was not of garage but some other place. It has also come in the evidence that he came to Mumbai in the year 1973 only. If that

be so, the question arises as to how the licence was issued to him in the year 1972. This aspect is not explained by defendant No.2.

8. After considering the evidence on record, the Courts below concurrently found that defendant No.2 did not establish that he was inducted in the garage prior to 1.2.1973. The Courts below accordingly decreed the suit.

9. Mr. Raut submitted that if any finding is given in the present proceeding, it will adversely affect the suit instituted by defendant No.1 for declaration of his status. In my opinion, defendant No.2 should have requested the trial Court to club this suit along with the present suit which is filed in the year 1998. Defendant No.2 allowed the trial Court to proceed with the present suit as also defendant No.2 proceeded with the appeal preferred by him. That apart, the contentions advanced in the present proceedings are also contentions advanced in the suit instituted by him. The moot question, as noted earlier, is whether defendant No.2 has established that he was inducted in this garage prior to 1.2.1973. Both the Courts after considering the evidence on record have held otherwise.

10. After considering the material on record, I do not find that the Courts below committed any error in passing the impugned order. Mr Raut was not in a position to demonstrate that the findings recorded by the courts below are perverse being based on no evidence or that they are contrary to the evidence on record. In view thereof, no case is made out for invocation of powers under Section 115 of CPC. Hence, Civil Revision Application fails and the same is dismissed.

11. At this stage, Mr. Raut orally applies for stay of the eviction decree upto and inclusive of 31.5.2016. He assures that all the adult family members residing with defendant No.2 will file usual undertaking in this Court within two weeks from today incorporating therein that [i] they are in possession of the garage and nobody else in possession, [ii] so far they have not created third party interest and they will hereinafter neither create third party interest nor part with the possession, [iii] they will clear all the arrears within 4 weeks from today, and [iv] in case they are unable to obtain suitable orders from the higher court within this period, they will hand over the vacant and peaceful possession of the garage to the plaintiff.

12. Notwithstanding dismissal of Civil Revision Application, the eviction decree shall not be executed for a period upto 31.5.2016, subject to defendant No.2 filing undertaking in aforesaid terms within two weeks from today after giving advance copy to other side. Let this application be kept on 8.2.2016 for compliance and acceptance of the undertakings.

(R. G. KETKAR, J.)

Deshmane (PS)