IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 84 OF 2016

Madanlal Kanhayalal Oswal)
(Gundecha))
Aged 68 years Occ Business)
R/o, 1753, Teli Ali, Ratnagiri) ..Applicant

Vs.

1 Nitin Vasant Redij)
Age 56 years Occ Business)
R/o. 1934 Shree Ram Ali)
Ratnagiri)

2 Vijay Kanhayalal Oswal)
(Gundecha))
Age 57 years, Occ Business)

3 Girish Kanhayalal Oswal)
(Gundecha))
Age 49 years, Occ Business)

4 Magiyabai Kanhayalal Oswal)
(Gundecha))
Age 87 years, Occ Household)
all R/o, 1753, Teli Ali, Ratnagiri) ..Respondents

Mr. P. S. Dani Senior Advocate with Mr. S. B. Shetye for the Applicant
Mr. Tejas Dande i/b Tejas Dande & Associates for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 15th FEBRUARY, 2016

ORAL JUDGMENT

1 Admit. Having regard to the nature of the final order to be passed, heard forthwith.

2 The Revisionary Jurisdiction of this court is invoked against the judgment and order dated 5-1-2016 passed by the Lower Appellate Court i.e. the Learned District Judge-2, Ratnagiri, by which the Appeal in question being Civil Appeal No.124 of 2012, filed by the Applicant herein came to be dismissed and resultantly the judgment and decree dated 5-5-2012 passed by the Trial Court in Regular Civil Suit No.201 of 2009, came to be confirmed.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the suit premises are the premises admeasuring 1004 sq.ft. on the ground floor in structure No.1969 in CTS Nos.2256 and 2257 in Ratnagiri. The said premises were originally belonging to one Vasant N Reddij who was the father of the Respondent No.1 herein i.e. the original Plaintiff. It is the case of the Plaintiff that Vasant Reddij had executed a Will dated 20-4-1996 and as per the said Will the suit property had come to the share of the Plaintiff and his brother. It seems that by the said Will, the other properties went to the share of the other brothers who are residents of Mumbai. The Suit in question being Regular Civil Suit No.2009 came to be filed and the ground urged was the bonafide requirement of the Plaintiff of the said premises for his business as well as residence. It was the case of the

Plaintiff that he is presently residing in two rooms along with his mother and other family members and he is presently not doing anything and therefore requires the premises both for his residence as well as for his business. The Applicant herein who is the tenant in respect of the said premises set up his defence by questioning the Will executed by the father of the Plaintiff. It was also his case that the Plaintiff was doing business in the premises which bore CTS No.1934 which the Plaintiff had conveniently transferred in the name of his nephew and had also transferred the business in the name of his nephew in July 2009 which according to the Defendants was done to facilitate the filing of the Suit which was done on 12-11-2009. It seems that the Defendants had obtained the relevant documents under the Right to Information Act and had sought to place them before the Trial Court. The Suit proceeded to trial and the Trial Court suffice it would be to state has decreed the Suit by judgment and order dated 5-5-2012. The Trial Court did not countenance the material produced on record by the Defendants which they had obtained under the Right to Information Act and proceeded on the basis of the existing evidence which was on record.

4 Against the said decree passed by the Trial Court, the Defendants carried the matter by way of Civil Appeal No.124 of 2012. In the said Appeal, the Defendants had filed an application Exhibit 49 for leading additional evidence in respect of the said documents which they had obtained under the

Right to Information Act namely the documents relating to said CTS No.1934 wherein the Plaintiff was allegedly carrying on business and wherein he had got the name of his nephew included and thereafter had transferred the premises and the business in the name of his nephew. On the said application Exhibit 49 the Lower Appellate Court had directed the Plaintiff to file his say and thereafter passed an order on 7-7-2015 that the said application would be considered along with the main Appeal. The Lower Appellate Court heard the Appeal between 27-7-2015 to 25-8-2015 on three dates and thereafter adjourned it for pronouncement of judgment on 25-8-2015. It was thereafter adjourned from time to time for pronouncement of judgment and ultimately the judgment came to be pronounced on 5-1-2016. Hence the Lower Appellate Court had pronounced the judgment almost after 5 months of the conclusion of the arguments. In so far as the judgment of the Lower Appellate Court is concerned, it is required to be noted that though it had passed an order that it would hear the application Exhibit 49 along with the Appeal, admittedly the said application Exhibit 49 has not been considered.

5 The Learned Counsel appearing for the Respondent No.1 fairly admits to the position that there is no final order passed on application Exhibit 49. A reading of the order passed by the Lower Appellate Court discloses that the Lower Appellate Court has considered the issue of comparative hardship first, then the issue as to whether the case of bonafide

requirement was made out by the Plaintiff and thereafter has dismissed the Appeal by holding that the interference with the decree passed by the Trial Court was not warranted. The Lower Appellate Court has made some fleeting reference to the material which was sought to be produced by the Defendants which they had obtained under the Right to Information Act. But as indicated above, the said application Exhibit 49 for being permitted to lead additional evidence, has not been specifically dealt with. The Lower Appellate Court was required to consider whether the permission could be granted to the Defendants to lead additional evidence and whether they have satisfied the conditions set out in Order XLI Rule 27 so as to be entitled to lead additional evidence. The Lower Appellate Court also ought to have considered whether the said additional evidence was required for adjudicating the issue with which it was ceased with.

6 The Learned Counsel appearing on behalf of the Respondents Mr. Dande would seek to support the order by making a reference to the fleeting reference which has been made by the Lower Appellate Court in the impugned judgment and order, to the case of the Defendants based on the additional evidence but in my view the said submission was not made with any deal of conviction. Since the Lower Appellate Court has not decided the said application Exhibit 49 and since the instant judgment has been delivered more than 5 months after it was reserved for judgment, in my view it would be just

and proper to set aside the impugned judgment and order passed by the Lower Appellate Court and remand the matter back to the Lower Appellate Court for a denovo consideration of the said Civil Appeal No.124 of 2012. The above Civil Revision Application is therefore allowed with the following directions :

(i) The impugned judgment and order dated 5-1-2016 is quashed and set aside and the matter is remanded back to the Lower Appellate Court for a denovo consideration of the Appeal.

(ii) The Lower Appellate Court as it itself has observed to consider the application Exhibit 49 along with the said Appeal and it is contingent upon its decision on Exhibit 49 that it would decide the Appeal.

(iii) The parties to appear before the Lower Appellate Court on 29-2-2016 in the afternoon session. The Lower Appellate Court thereafter to fix the schedule for disposal of the Appeal as per its convenience but to do so not later than 30-4-2016.

(iv) The parties to be given appropriate opportunity both in respect of the application Exhibit 49 as well as the Appeal.

(v) The Learned Counsel for the parties agree that the parties would appear

before the Lower Appellate Court on 29-2-2016. The need to give notice to any of the parties is therefore obviated.

(vi) The stay which was operating to the decree pending the Appeal would continue to operate till the Appeal is disposed of in terms of the instant order.

(vii) Needless to state that all the contentions of the parties are kept open for being urged before the Lower Appellate Court.

(viii) The Civil Revision Application is accordingly disposed of.

[R.M.SAVANT, J]