

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CIVIL REVISION APPLICATION NO. 224 OF 2014

Smt. Nirmala Omprakash Agarwal & ...Applicants
Ors.

Versus

Shri Manilal Champaklal Shah ...Respondent

.....

Mr. S. A. Ghaisas i/b Mr. A. M. Joshi for the Applicants.

CORAM : R. M. SAVANT, J.

DATE : 1st MARCH, 2016.

P. C. :

1. The writ jurisdiction of this Court is invoked against the order dated 30.09.2013 passed by the Lower Appellate Court i.e. the learned District Judge, Pune by which order the Appeal filed by defendant No.1 i.e. respondent No.1 herein came to be allowed and resultantly the decree passed by the Trial Court in Civil Suit No. 683/92 came to be set aside. Respondent No.1 was the original tenant in respect of the suit premises which were existing on the plot of land in question. The said suit being Civil Suit No. 683/92 was filed on the basis of bonafide requirement of the plaintiffs who are heirs of the original defendant No.2 being his wife and children. It seems that a development agreement was executed by the defendant

No.2 in his capacity as a co-owner in respect of a plot of land in which the suit premises were situated. Pursuant to the said development agreement, the defendant No.1 had undertaken development and also handed over possession of the premises which he was to hand over as and by way of permanent alternate accommodation. Defendant No.1 filed his written statement and questioned the relationship between the parties and stated that there is no relationship of landlord and tenant for the plaintiffs to file the suit in question. The suit in question was filed by the plaintiffs on the basis of a power of attorney allegedly executed by defendant No.2 i.e. her husband and also purportedly as a co-owner. In view of the challenge to the maintainability of the suit on the ground that there was no jurial relationship of landlord and tenant. The Trial Court framed an issue as regards to the maintainability of the suit. The Trial Court answered the said issue in favour of the plaintiffs on the ground that being the wife of defendant No.2, she is the co-owner and a suit filed for eviction against the tenant is maintainable. The Trial Court, however, did not take into consideration the agreement for development which was executed by defendant No.2 in favour of defendant No.1 and neither did the Trial Court take into consideration the fact that the said agreement superimposes itself on

the relationship that the parties may have had i.e. of landlord and tenant. After answering the said issue in favour of the plaintiffs, the Trial Court by judgment and order dated 23.02.2004 decreed the suit.

2. Defendant No.1 carried the matter by way of an Appeal to the Lower Appellate Court being Appeal No. 148/04. The Lower Appellate Court in view of the issue that was framed by the Trial Court, adjudicated upon the issue whether there was a relationship of landlord and tenant. The Lower Appellate Court having regard to the facts which had come on record namely the execution of the development agreement by the landlords which included the defendant No.2 in favour of defendant No.1, as also the fact that the suit was filed by the plaintiffs i.e. his wife and children during the lifetime of the defendant No.2, as also considering the fact that defendant No.2 was given possession of alternate premises by the defendant No.1 after the redevelopment was carried out pursuant to the agreement, came to the conclusion that the Trial Court erred in holding that there was relationship of landlord and tenant between the parties. The Lower Appellate Court further observed that the Trial Court decreed the suit without taking into consideration the impact of the development agreement on the relationship between the parties. The Lower Appellate Court accordingly set aside the

decree passed by the Trial Court and in turn dismissed the suit. The Lower Appellate Court also whilst dismissing the suit held that there is a suppression by the plaintiff No.1 in as much as the suit filed by her against defendant No.1 for injunction being Civil Suit No. 1497/1992 was not produced before the Trial Court though undertaking was given. The Lower Appellate Court, therefore, has for cogent reasons upset the decree passed by the Trial Court. Having regard to the reasons mentioned by the Lower Appellate Court in the impugned order, it cannot be said that the Lower Appellate Court has committed any error of jurisdiction or any other illegality or infirmity for this Court to exercise its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

(R. M. SAVANT, J.)