

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

CIVIL REVISION APPLICATION NO.104 OF 2016

WITH

CIVIL APPLICATION NO.132 OF 2016

Smt. Sunanda Dattaram Dalvi and others .. Applicants

Versus

Mrs. Dhanesaradevi Mulchand Jaiswal and others .. Respondents

Mr. A. N. Nasikwala, for the Applicants.

Mr. R. D. Mishra, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 26th FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the judgment and order dated 30.09.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which, the Appeal filed by the Applicants herein came to be dismissed and resultantly, the judgment and decree dated 06.01.2014 passed by the Learned Trial Court in RAE & R Suit No.1497 of 2001 came to be confirmed.

2. The Respondents herein are the landlords of the suit premises which is Room No.10, in Chawl known as "Mulchand Niwas" situated at

Utkarsha Nagar, J. M. Road, Bhandup (West), Mumbai-400 078. The suit was founded on two grounds i.e. arrears of rent and subletting. In so far as the ground of subletting is concerned, the said ground was invoked as it was the case of the Plaintiffs that the Defendant Nos.1 to 3 who were the tenants have illegally let out the premises to the Defendant No.4.

3. The parties went to trial. The Trial Court on the basis of the evidence on record came to a conclusion that the ground of arrears of rent was not substantiated by the Plaintiffs. In so far as the second ground of subletting is concerned, the Trial Court on the basis of the evidence which came on record came to a conclusion that it is the Defendant No.4 who is in possession of the premises and no material was placed on record to show that the Defendant Nos.1 to 3 were jointly occupying the premises with the Defendant No.4. The Trial Court adverted to the fact that though the claim was of joint tenancy was made by the Defendant No.4 and though the Defendant No.4 has produced various documents to show that he is in possession. Significantly, no document was produced to show that the Defendant Nos. 1 to 3 are in possession. The Trial Court also adverted to the fact that an amount of Rs.1,00,000/- was paid by the Defendant No.4 to the Defendant Nos.1 to 3 for which there was no explanation. The Trial Court also adverted to the fact that the Defendant Nos.1 to 3 had executed Power of Attorney in favour of the Defendant No.4 even prior to

arraying of the Defendant No.4 as a party Defendant to the suit and therefore, the said facts were a pointer to the fact that the Defendant No.4 was in exclusive possession of the suit premises. The Trial Court also referred to the Bailiff's Report in respect of service of suit summons prior to amendment of the plaint and post the amendment of the plaint which reports are referred to in paragraph 39 of the judgment of the Trial Court. It has also come in the evidence of the DW-1 that on the date of the filing of the suit one Shri. Kishor Shripat Shinde was in possession. It was the case of the Plaintiffs that Defendant Nos.1 to 3 have sublet the premises to the Defendant No.4 Shri. Kishor Shripat Shinde who in turn has sublet the premises to one Ramesh Shankar Mondkar. Hence, when the Defendants' own witness has deposed to the effect that on the date of the filing of the suit, the said Shri. Kishor Shripat Shinde was in possession, it was incumbent upon the Defendants to justify as to in what capacity the said Shri. Kishore Shripat Shinde was in possession of the premises. The Trial Court accordingly on the basis of the said material recorded a finding of fact that it is the Defendant No.4 who is in exclusive possession of the premises and therefore the ground of subletting was proved by the Plaintiffs.

4. The Defendants aggrieved by the decree passed by the Trial Court carried the matter in Appeal being Appeal No.142 of 2014 on the

basis of the Power of Attorney which was executed in favour of the Defendant No.4 by the Defendant Nos.1 to 3. The Appellate Bench of the Small Causes Court on a re-appreciation on the material on record confirmed the decree passed by the Trial Court on the ground of subletting and also confirmed the rejection on the ground of arrears of rent. The Lower Appellate Court also held that the decree of eviction was also required to be passed on the ground of the disclaimer of the title of the landlord by the Defendants. The Lower Appellate Court accordingly by the impugned judgment and order dismissed the Appeal and thereby confirmed the decree passed by the Trial Court.

5. The Learned Counsel Mr. A. N. Nasikwala appearing on behalf of the Applicants would seek to reiterate the case of the Applicants before the Courts below, namely that there is no evidence on record to justify the decreeing of the suit on the ground of subletting. It was the submission of Mr. A. N. Nasikwala that the Plaintiffs have not discharged the burden which was cast upon them in the case of subletting, for the burden to shift to the Defendants. In my view, it is not possible to accept the said contentions of Mr. A. N. Nasikwala. As indicated above, the Trial Court as well as the Appellate Court having regard to the facts and circumstances which are on record have reached a conclusion that it is the Defendant No.4 who is in possession of the premises in question and the Defendant

Nos.1 to 3 were not forthcoming in so far as in what capacity the Defendant No.4 was in possession of the premises. In that view of the matter, no case for interference in the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

6. In view of the dismissal of the Civil Revision Application, the Civil Application to accordingly stand disposed of.

7. At this stage, the Learned Counsel Mr. A. N. Nasikwala seeks time to vacate the premises in question. In the facts and circumstances of the case, time upto 31.08.2016 is granted to vacate the premises on the usual undertaking to be filed in this Court within two weeks from date as also on the condition that the Applicants deposit the compensation in terms of the order passed by the Appellate Court whilst the Appeal was pending for the period upto 31.08.2016. If the undertaking is not filed, then the Respondents/Plaintiffs would be free to execute the decree in accordance with law.

[R.M. SAVANT, J]