

Sequeira

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

CIVIL REVISION APPLICATION NO. 157 OF 2015

Shri Gopal Pandurang alias
Pamya Shetty alias Naik- deleted,
since deceased.

-1 a) Shekhar Gopal Naik & ors.

.. Applicants

Vs.

The Madhavnagar Co-operative
Housing Society & anr.

.. Respondents

Mr. Shekhar Prabhavalkar, for Applicants.
Mr. Ajit Kocharekar, for Respondent No.1.
Mr. Chandrakant Chavan, for Respondent No.2.

***CORAM : N.M. Jamdar, J.
Monday, 5 December 2016.***

Oral Order :

By this Revision, Applicant-original Plaintiff seeks to challenge the concurrent Judgment and Orders passed by the Small Causes Court. Mumbai and the Appellate Bench of Small Causes Court wherein the suit and appeal filed by Applicant-original Plaintiff for declaring himself as tenant, have been dismissed.

2. The Applicant instituted R.A.D Suit No.1936 of 1996. It was the contention of Applicant-original Plaintiff that he was in possession of a room prior to year 1967 and he had allowed Defendant No.2 to take shelter in adjoining room for temporary period, however, the Respondent No.2 at the behest of Respondent No.1-Society tried to dispossess the Applicant-original Plaintiff and an injunction and declaration was sought that the Applicant is a tenant of the suit premises. The case of the Applicant seeking tenancy was denied by Respondents. The parties led their evidence. On behalf of the Applicant, his son stepped in the witness box and also one Shri Bhavsar who was another tenant in the building. On behalf of Respondent No.1- tenant / Managing committee member was examined. The learned Small Causes Court Judge considered the evidence led by both the parties, oral as well as documentary and by Judgment and Order dated 28 April 2006 dismissed the Suit. Appeal No.574 of 2006 filed by Applicants was dismissed by the Appellate Bench on 29 November 2014.

3. Heard Mr.Shekhar Prabhavalkar, learned counsel for Applicants Mr.Ajit Kocharekar, for Respondent No.1 and Mr.Chandrakant Chavan, for Respondent No.2.

4. Mr.Prabhavalkar submitted that the evidence of Mr.Uttam T. Bhavsar wherein he had asserted that tenancy was created in favour of Plaintiff who occupied the premises as a caretaker by deducting certain amount from his salary, has gone unchallenged and is being

discarded only on the ground that he is witness of Applicants. He submitted that various documents produced by Applicants which demonstrate his longstanding position, have been ignored. He submitted that Plaintiff could not have been permitted to reside in the suit premises without payment of any amount and the theory of deduction of rent from his salary which has gone unchallenged, has not been taken note of. He submitted that registers, if produced by the Respondent-Society would have reflected the payment of rent. Mr.Prabhavalkar learned counsel for Respondent No.1 submitted that Respondent-Society had passed a resolution providing alternate accommodation to the Applicant which could not have been done unless there was any right with the Applicant - original Plaintiff. He submitted that the witness examined by the Respondent-Society was not aware of various basic positions and his evidence could not have been relied. Mr.Prabhavalkar submitted that the suit had to be filed in a hurry and therefore various particulars such as rent amount could not be specified therein in the plaint. On this ground it was submitted that since the appreciation of evidence is perverse, case is made out in favour of Applicants. Mr.Kocharekar learned counsel for the Respondent No.1 supported the impugned order and contended that no oral or documentary evidence was produced by Applicants.

5. It is the Applicant who has instituted a suit and has sought a declaration of tenancy. That the Applicant is in possession of the suit premises since long is not in dispute. It is however the case of

Applicant that he was occupying the premises as caretaker. The basic ingredients for seeking tenancy i.e. payment of rent must be pleaded in the plaint. If the case was that one tenant Mr.Desai on behalf of the Society had put the Applicant in possession on payment of certain rent i.e. of ₹ 50 this obvious position ought to have been placed on record when the plaint was filed. The plaint which otherwise contains all the particulars, is silent on this crucial point. The suit was filed in the year 1996 and that the alleged occupation from the year 1968. The argument that it was filed in a hurry and therefore this ingredient was missing, cannot be accepted. There is no error committed by both the Courts at all in taking note of this position.

6. As far as the evidence of Mr.Bhavsar, heavily relied upon by Mr.Prabhavalkar is concerned, both the Courts have taken note of the evidence so produced. Both the Courts have also noted the fact that Mr.Bhavsar had made a categorical statement that whatever he had deposed was deposed on the instructions of learned counsel for Applicants. This witness had nothing independent to say otherwise than what was stated by Plaintiff. Therefore, both the Courts had to balance his evidence along with the other pieces of evidence and the evidence led by Respondents.

7. As far as the resolution regarding alternative accommodation is concerned, Mr.Kocharekar pointed out that a specific stand was taken that the rooms in question at the relevant time were in possession of Muley brothers and a resolution was passed.

8. The contentions which are sought to be advanced in this Revision have been dealt with by both the Courts and after appreciating the evidence a finding of fact is recorded. Since the suit is instituted for declaration of tenancy, in absence of any unquestionable document such as the rent receipt, finding of fact recorded by both the Courts after due appreciation of evidence cannot be overturned in the limited revisional jurisdiction available under section 115 of the Code of Civil Procedure as the view taken is a possible view. In the circumstances, there is neither any error of jurisdiction nor any perversity in appreciation of evidence. The Revision Application cannot be entertained and is rejected.

(N.M.Jamdar, J.)