

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 423 OF 2014**

Tukaram Krishnaji Pawale

..Applicant

Vs.

Shivaji Krishnaji Pawale & Anr.

..Respondents

Mr. S. S. Redij for the Applicant

Mr. Abhay Parab for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 26th FEBRUARY, 2016

P.C.

1 The Revisionary jurisdiction of this Court is invoked against the order dated 19-3-2014 passed by the Appellate Bench of the Small Causes Court, by which order, the Appeal in question being No.427 of 2007 filed by the Applicant herein came to be dismissed and resultantly the judgment and order dated 26-4-2007 passed by the Trial Court came to be confirmed.

2 The Applicant herein is the original Defendant No.2 to the Suit and the Respondent No.1 herein is the original Plaintiff. The Applicant and the Respondent No.1 are brothers and the bone of contention are the suit premises being Room No.29, Hirji Jivraj Wadi, Opposite Swan Mills, T.J.Road, Seweree, Mumbai 400 015. The Plaintiff has filed the Suit in question being R.A.D. No.1253 of 2003 for declaration of his tenancy in respect of the suit premises and for seeking an injunction for restraining the Defendant No.1 i.e. the

Respondent No.2 herein, landlord, from transferring the rent receipt in the name of the Defendant No.2. It was the case of the Plaintiff that he is the tenant in the suit premises since the year 1967 as he has acquired the suit premises on tenancy basis from the Defendant No.1, it was his case that the Defendant No.2 who was residing at the native place came to Mumbai and the Plaintiff permitted him to reside in the suit premises. However, the cause of action for filing the Suit is the attempt of the Defendant No.2 to get the rent receipt in respect of the suit premises transferred to his name. The Plaintiff had therefore sought declaration of tenancy and has also sought injunction injuncting the Defendant No.1 from transferring the rent receipt in favour of the Defendant No.2 i.e. the Petitioner herein.

3 The Suit proceeded to trial. The Trial Court on the basis of the material on record held that in the absence of any material placed on record by the Defendant No.2 indicate that the Plaintiff had surrendered the tenancy to the Defendant No.1 and that he had consented to the rent receipt being transferred in the name of the Defendant No.2, the case of the Plaintiff that he has become the tenant in the year 1976 cannot be accepted. The Trial Court therefore held that the Plaintiff continues to be the tenant of the suit premises in view of the fact that rent receipt was standing in his name and accordingly granted a declaration and injunction by judgment and order dated 26-4-2007.

4 The aggrieved Defendant No.2 carried the matter in Appeal by way of Appeal No.427 of 2007. The Appellate Bench of the Small Causes Court Mumbai on a re-appreciation of the material on record did not deem it appropriate to interfere with the findings of the Trial Court and the consequential decree passed by the Trial Court. The Appellate Bench of the Small Causes Court came to a conclusion that in the absence of any evidence to show that the Plaintiff had surrendered the tenancy to the Defendant No.1 and had consented to the transfer of the rent receipt in favour of the Defendant No.2. The declaration of tenancy issued in favour of the Plaintiff was justified.

5 Hence both the Courts below have concurrently held that the Plaintiff is entitled to the declaration of tenancy as also the injunction sought. In the light of the concurrent orders passed by the courts below, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]