

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

CIVIL REVISION APPLICATION NO. 276 OF 2016

Rajendra Hardayal Gupta

..Applicant

Vs

1. Vidyabai Hardayal Gupta and
Ors.

.. Respondents

Mr. R.N.Jawal, Advocate for Applicant.

CORAM : R.G.KETKAR,J.
DATE : 13/07/2016

PC:

1. Heard Mr. R.N.Jawal, learned counsel for the applicant at length.
2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant, has challenged the Judgment and decree dated 25.11.2011 passed by the learned Judge presiding over Court Room no.23 of the Court of Small Causes Court at Bombay in R.A.D.Suit No. 1462 of 2003 as also the Judgment and decree dated 18.2.2016 passed by the Appellate Bench of Small Causes Court at Bombay in R.A.D. Appeal No. 5 of 2012. By these orders, the Courts below dismissed the suit instituted by the applicant, hereinafter referred to as 'plaintiff', for declaration of his tenancy rights in respect of Room no.3, Building no.5,

Ground floor, 2nd Khattargalli Lane, Thakurdwar Road, Mumbai -04 (for short, 'old premises') and in respect of Room no. 208 on 2nd floor, 2nd Kattargalli Lane, Thakurdwar Road, Mumbai-400002 in a newly constructed building (for short, 'new premises').

3. In support of this Application, Mr. Jawal strenuously contended that the father of the plaintiff Hardayal Gupta and his brother Bansilal Gupta were original tenants in respect of the old premises and till date, rent receipts were standing in their names. Bansilal Gupta died issueless. His father Hardayal Gupta died in November 1976 leaving behind plaintiff and defendant no.1,(mother of the plaintiff), defendant no.2 (brother of the plaintiff and defendants no.3 and 4, married sisters of the plaintiff. He submitted that at the time of death of Hardayal Gupta, the plaintiff was residing along with defendants no. 1 to 4 in the old premises and therefore he is a tenant, joint tenant/co-tenant along with defendants no. 1 to 4 in respect of old premises. He submitted that the learned trial Judge dismissed the suit on the ground that the plaintiff had relinquished his tenancy rights in respect of the old suit premises and, therefore, he has no right at all in the old suit premise. He submitted that in fact in paragraphs 14 and 15, the learned trial Judge recorded a finding that the plaintiff and defendants no. 1 to 4 were residing in the old suit premises along with Hardayal Gupta. On

his death, tenancy rights devolved upon the plaintiff and defendants no.1 to 4. In paragraph 15, the learned trial Judge held that the plaintiff and defendants no. 1 to 4 were residing in old premises at the time of death of Hardayal Gupta and this fact was also admitted by defendant no.1 in her evidence.

4. As against this, the Appellate Court proceeded wholly on altogether different points and held that suit premises is not in existence in as much as the building where the old premises situate, was demolished and the said building is not in existence. The Appellate Court held that as the building where the old premises was situate, is not in existence, no declaration of tenancy rights can be given. He has taken me through the evidence adduced by the parties and submitted that the application requires consideration.

5. I have considered the submissions advanced by Mr. Jawal. I have also perused the material on record. In the suit originally instituted by the plaintiff, the plaintiff had sought declaration that he is a tenant, joint tenant/co-tenant along with defendants no. 1 to 4 in respect of the old premises. Prayer clause (a) was amended and now the plaintiff seeks declaration that he is a tenant, joint tenant/co-tenant along with defendants no. 1 to 4 in respect of Room no 208, second floor in the building known as Siddhesh, 2nd khattargalli, Thakurdwar Road, Mumbai (new

premises). As far as the trial Court is concerned, the trial Court held that Hardayal Gupta died in 1976 and at that time the plaintiff was residing along with defendants no. 1 to 4 in old premises. After considering the evidence of defendant no.1 as also after considering the admissions given by the plaintiff, the learned trial Judge held that the plaintiff got separated from defendant no.1 in the year 1993. The evidence of defendant no.1 regarding relinquishment of the tenancy rights was not challenged by plaintiff during cross examination and the said evidence remained unchallenged. From the evidence of the plaintiff, it is evident that since 1998 he is residing along with his family in the premises situate at Mugbhat Lane. Though after the death of Hardayal Gupta in the year 1976, the plaintiff was joint tenant in the old premises. Subsequently, he relinquished his tenancy rights. Thus, on the date of institution of the suit, he was not having any right in the old premises.

6. As far as Appellate Court is concerned, the Appellate Court observed in paragraph 21 that the old suit premises is not in existence. Even the building where the old suit premises was situate, is not in existence and it is redeveloped by defendant no.5-landlord. As the building where the old premises was situate is not in existence, no declaration can be granted in respect of tenancy rights. In paragraph 24, the Appellate Court

found that the new premises in Siddhesh building on ownership were given on ownership basis as per Regulations 33(7) of D.C. Regulations as also provisions of the Maharashtra Housing and Area Development Act, 1976 (MHADA), when relationship of landlord and tenant ceased to exist. For agitating the grievance, if any, Small Causes Court is not appropriate forum and the jurisdiction for the same lies elsewhere.

7. With the assistance of the learned counsel Mr. Jawal, I have perused the oral evidence. In particular, defendant no.5 landlord deposed that MHADA authorities had prepared list of tenants and/or occupants. The copy of the list prepared by MHADA authorities shows that defendant no.1 was tenant in respect of old premises. He accordingly produced certified list of tenants issued by MHADA authorities. It has also come on record that the new premises were given on ownership basis. Mr. Jawal was not in a position to point out any material to show that the plaintiff has challenged the list prepared by MHADA authorities treating defendant no.1 as tenant in the old premises as also agreement entered into by and between defendant no.1 and defendant no.5 giving the new premises to defendant no. 1 on ownership basis.

8. In paragraph 5 defendant no.1 deposed that defendant no.5 entered into agreement dated 15.10.2005 with her for allotment of self-contained flat admeasuring 225 sq.ft., viz. suit

premises. The said agreement is duly registered with the office of Sub Registrar of Assurances Mumbai on 30.1.2006. In other words, by this agreement, the ownership rights were conferred on defendant no.1 in respect of new premises as is evident from paragraph 7 of evidence of defendant no.1.

9. In view thereof, I do not find that the Courts below committed any error in dismissing the suit. Equally, I do not find any merits in the submission of Mr. Jawal that the trial Court and the Appellate Court dismissed the suit on altogether different grounds. As basically the Appellate Court rightly held that once the old premises were demolished and defendant no.1 was allotted new suit premises on ownership basis, relationship of landlord and tenant ceased to exist. In view thereof, no case is made out for invocation of powers under section 105 of C.P.C. Application fails and the same is dismissed.

(R.G.KETKAR, J.)