

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 381 OF 2014**

Shri Sridhar Narayan Kadam

..Applicant

Vs

Shri Jahangir P Patel and Ors

.. Respondents

Mr. J.G.Damani, Advocate for Applicant.

Mr.Jaydeep Deo i/b Summet K. Tyagi, Advocate for Respondents
no. 1 and 3.

CORAM : R.G.KETKAR,J.

DATE : 20/06/2016

PC:

1. Heard Mr.J.G.Damani, learned counsel for the applicant and Mr. Jaydeep Deo, learned counsel for the respondents no 1 and 3 at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and decree dated 25.10.2004 passed by the learned Judge, presiding over Court Room No.17 of the Court of Small Causes at Bombay in R.A.D. Suit No. 318 of 1993 as also the Judgment and decree dated 24.1.2014 passed by the Appellate Bench of the Court of Small causes at Bombay in Appeal No. 64 of 2005. By these orders, the Courts below dismissed the suit instituted by the applicant, hereinafter referred

to as 'plaintiff', for declaration of his tenancy rights under section 5(11)(c)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act').

3. The plaintiff has instituted suit for declaration of his tenancy rights as also for perpetual injunction restraining the defendants from obstructing the plaintiff from entering in room no.3 admeasuring 455 sq.ft, Hill Creast Road, Dr. Gopalrao Deshmukh Marg, Peddar Road, Mumbai 400026 (for short, 'suit premises'). It is the case of the plaintiff that the suit premises was owned by Mr. Sarosh H.A.Vakil. He was a Bachelor. He expired in the year 1987 leaving behind his sister and her husband, the defendants. After the death of Mr. Vakil, the defendants became the landlords of the suit premises. His father Narayan was in use, occupation and possession of the suit premises since 1937. Narayan expired in the year 1985. He being the son and legal heir of Narayan, is entitled to inherit the tenancy under section 5(11)(c)(i) of the Act.

4. The defendants resisted the suit, inter alia, contending that Narayan was never the tenant in the suit premises and consequently the plaintiff is not entitled to seek declaration of his tenancy rights. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. After considering the evidence on record, the Courts below have dismissed the suit. It

is against this decision, original plaintiff has instituted the present suit.

5. In support of this application, Mr. Damani reiterated the submissions that were advanced before the Courts below. He invited my attention to paragraph 18 of the Appellate Court Judgment where reference is made to various documents. He submitted that the appellants had also filed criminal case under section 341 Indian Penal Code, 1860 in the Court of Metropolitan Magistrate. He submitted that the documents produced by the plaintiff clearly establish that the plaintiff's father Narayan and after his death the plaintiff, is in settled possession of the suit premises. He submitted that apart from claiming declaration of tenancy rights, he sought injunction restraining the defendants from obstructing the plaintiff from entering into the suit premises as also disturbing his peaceful possession. Assuming for the sake of argument without conceding that the plaintiff has not established his tenancy rights, nonetheless, the defendant cannot dispossess him without following due process of law. Mr.Damani invited my attention to Written Statement filed by original defendant Jahangir Patel as also the written statement filed by defendants no. 2 and 3. He further submitted that during the pendency of the suit, the plaintiff took out interim notice restraining the defendants from obstructing the plaintiff and his

family members from entering into the suit premises or any part thereof. The learned trial Judge partly granted relief in terms of prayer clause (d) on 25.9.1998. The learned trial Judge restrained the defendants from creating third party right, title and interest of whatsoever nature. The learned trial Judge refused to grant relief in terms of prayer clause (c) restraining the defendants from preventing the plaintiff and his family members entering into the suit premises or any part thereof. Aggrieved by that decision, the plaintiff preferred Appeal No.506 of 199 which was allowed by the appellate court on 8.3.2001. The Appellate Court issued injunction restraining the defendants from preventing the plaintiff and his family members from entering into the suit premises or any part thereof and making use of the suit premises by the plaintiff and his family members. The defendants were directed to remove loft put up by them on the suit premises. If the defendants failed to remove, the plaintiff was at liberty to remove the said loft for making use of the suit premises. Mr. Damani submitted that the plaintiff is in settled possession of the suit premises. For all these reasons, he submitted that the application requires consideration.

6. On the other hand, Mr. Deo supported the impugned orders. He relied upon the decision of *Maria Margarida Sequeria Fernandes Vs Erasmo Jac de Sequeria*, AIR 2012 S.C. 1727. He

submitted that after appreciating the evidence on record, the Courts below held that the plaintiff's father was working as Gardener. The plaintiff's father was not a tenant in the suit premises. The plaintiff did not produce any material to substantiate his plea that his father was a tenant and after his death the plaintiff became tenant in view of Section 5(11)(c)(i).

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The short question is whether the plaintiff is entitled to declaration of his tenancy rights and injunction. In paragraph 18 of the appellate court decision, reference is made to various documents. All these documents do not substantiate plea of the plaintiff that either his father and after his death the plaintiff became tenant. In paragraph 19, the appellate court considered the admissions given by the plaintiff during the course of cross examination. The plaintiff admitted that his father was in service of earlier landlord as gardener and caretaker. He did not know on what basis the suit premises were given to his father. He also does not know terms and conditions between his father and original landlord on the basis of which the suit premises were taken. The plaintiff also examined PW Vijay Patil. He also admitted that he does not recollect that the rent receipt is issued to the plaintiff. PW 3 Vijay Sawant admitted that

since 1992 the plaintiff was not in possession of the suit premises and that he does not know how and when the suit premises was given to the plaintiff's father.

8. In paragraph 23, the appellate court after considering the oral and documentary evidence on record held that the documents are either much prior to the death of father of the plaintiff Narayan or subsequent thereto. The documents do not sufficiently prove that the plaintiff was in continuous use, occupation and possession of the suit premises after the death of his father till the alleged incident dated 22.8.1992 was happened.

9. In paragraph 26, the appellate Court also noted that the order dated 8.3.2001 passed in Appeal No.506 of 1991 in Interim notice No.1441 of 1997 was set aside by this Court by order dated 13.1.2003 in Writ Petition No.4836 of 2001. It was further observed that it is an admitted position that on the date of filing of the suit, the plaintiff was not in possession of the suit premises. After considering the evidence on record as also the decision in Maria Margarida Sequeria Fernandes (supra), the appellate Court concluded that the plaintiff did not establish his tenancy rights. There is no iota of evidence that the rent receipt was ever issued either in the name of the father of the plaintiff or in his name. It was further observed that father of the plaintiff

being Gardner was allowed to use two rooms in katchha construction free of costs. In view of the decision in the case of Maria Margarida Sequera Fernandes (supra) Narayan would not acquire any interest in the suit premises.

10. After considering the evidence on record, I do not find that the Courts below have committed any error in dismissing the suit. In the case of Maria Margarida Sequeria Fernandes (supra) the Apex Court has approved the decision of Delhi High Court in Thomas Cook (India) Limited Vs. Hotel Imperial, AIR 2007 (NOC) 169 and it was observed thus:

82. The High Court of Delhi in a case Thomas Cook (India) Ltd. v. Hotel Imperial, AIR 2007 (NOC) 169 held as under:

“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing --ejectment from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much

consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the Plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

83. We approve the findings of the High Court of Delhi on this issue in the aforesaid case."

11. In paragraph 101, the Apex Court enumerated the principles of law which are as under:

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his

favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

12. Applying the tests laid down in the above decision and having regard to the fact that the Courts below, after appreciating the evidence on record, have concurrently held that the plaintiff's father Narayan was not the tenant and was a Gardner working with the original landlord, I do not find that any case is made out for invocation of powers under section 115 of C.P.C. The applicant was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of material on record, no reasonable person would have come to the conclusions arrived at by the courts below. In the light of the aforesaid discussion, I do not find that the applicant has made out any case for invocation of powers under section 115 of C.P.C. In the result, Application fails and the same is dismissed.

(R.G.KETKAR, J.)