

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.632 OF 2015

Shivanna L. Shetty

.. Applicant

Versus

Prabhakar Laxman Narvekar

(Since deceased through legal

Heirs and representatives)

1A. Smt. Vijaya Prabhakar Narvekar and others

.. Respondents

Ms. Asha Bhambani i/by Miss. Purnima G. Bhatia, for the Applicant.

Mr. Clifford Martis, for the Respondent Nos.1A and 1B.

CORAM : R.M. SAVANT, J.

DATE : 9th FEBRUARY 2016

PC.

1. There are concurrent orders passed by the Courts below as regards the Applicant's/Plaintiff's entitlement to the declaration of being a tenant. The Trial Court has dismissed the suit in question being RAD Suit No.1831 of 1984 and the Appellate Court has confirmed the same.

2. The suit in question being RAD Suit No.1831 of 1984 was filed by the Applicant/original Plaintiff for a declaration that he is a tenant

in respect of the suit premises which are hotel premises wherein hotel by the name "Shiv Punjab" is presently being conducted. In respect of the said premises one Laxman Narvekar and one Vasudeo Wagh were the tenants and the said Laxman Narvekar was conducting a hotel in the name and style of "Jai Maharashtra Vishranti Griha". By the first agreement executed on 28.04.1958 the said premises were handed over on conducting basis to the Applicant herein on the terms and conditions set out in the agreement. The said agreements were followed by the subsequent agreements dated 12.09.1966, 01.05.1968, 07.08.1972, 02.03.1976 and 02.03.1982 which were for the periods mentioned therein. In between the said Laxman Narvekar expired in the year 1965 resulting in the agreement dated 12.09.1966 being executed by his heirs in favour of the Plaintiff. It appears that on account of the disputes which had arisen in view of the fact that the Plaintiff was not adhering to the terms of the agreement as he had started serving non-vegetarian food, the Defendants i.e. Respondents herein filed LE & C Suit No.179/216 of 1988 for eviction of the Plaintiff from the suit premises. However, the said suit was preceded by a suit filed by the Plaintiff in the City Civil Court, Mumbai being SC Suit No.2805 of 1983 for injunction on the ground that the Defendants were interfering with his possession of the hotel premises. The said suit for injunction was filed on the basis of the agreements which

were executed from 28.04.1958. It appears that in the said suit an injunction came to be granted to the Plaintiff thereby restraining the Defendants from interfering with his possession. It appears that thereafter the suit came to be dismissed for non-prosecution. The Plaintiff i.e. the Applicant herein filed the instant RAD suit for declaration that he is a tenant in respect of the premises in question. The Trial Court by its judgment and order dated 24.09.2001 dismissed the suit on the ground that the Plaintiff has not proved that he had become tenant of the premises and that the agreements were not a camouflage for subletting the premises to the Plaintiff. The Trial Court adverted to the fact that the parties had entered into agreements right from the year 1958 to the year 1982 which were conducting agreements and therefore it could not be said that any right was created in favour of the Plaintiff. The Trial Court also adverted to the fact that the Plaintiff had filed the suit in the City Civil Court based on the said agreements, wherein it was his contention that he was conducting the hotel business pursuant to the said agreements and therefore was entitled for injunction against the Defendants. The Trial Court was of the view that the Plaintiff having relied upon the said agreements in the suit filed by him in the City Civil Court for injunction could not now contend that the said agreements were in fact a camouflage for the sub-tenancy as created. The Trial Court took into consideration the

documentary evidence which was produced on behalf of the Plaintiff and came to a conclusion that the said documentary evidence could not aid the Plaintiff in proving the fact that sub-tenancy was created in favour of the Plaintiff. As indicated above, the Trial Court has by the judgment and order dated 24.09.2001 dismissed the RAD suit. Since both the RAD Suit No.1831 of 1984 and LE & C Suit No.179/216 of 1988 were heard together, the Trial Court has allowed the LE & C suit filed by the Defendants.

3. The Plaintiff carried the matter in Appeal by filing Appeal No.66 of 2002 and Appeal No.67 of 2002. The Appellate Bench of the Small Causes Court dismissed the LE & C suit as being not maintainable before the Small Causes Court. However, in so far as the RAD Suit No.1831 of 1984 is concerned, the Appellate Bench of the Small Causes Court on a re-appreciation of the material on record did not find any reason to interfere with the findings of fact recorded by the Trial Court and accordingly dismissed the Appeal by the impugned judgment and order dated 21.03.2006.

4. The Learned Counsel appearing for the Civil Revision Applicant Ms. Asha Bhambani would seek to place reliance on the documentary evidence which according to her was placed before the Trial

Court and not appreciated in its proper perspective by the Trial Court, to contend that the said documents coupled with the clauses in the agreements would unmistakably lead to a conclusion that the agreements in question were in fact nothing but agreements subletting the premises to the Plaintiff and since the Plaintiff was in occupation on 01.02.1973, the Plaintiff is a protected tenant. The Learned Counsel Ms. Asha Bhambani has taken me through the documentary evidence which is on record and of which a compilation was tendered by the Learned Counsel.

5. Per contra, the Learned Counsel for the Respondents Mr. Clifford Martis would support the concurrent orders passed by the Courts below. The Learned Counsel would contend that the material on record hardly makes out a case of a sub-tenancy being created. The Learned Counsel would contend that the evidence which has come on record unmistakably points out that the Plaintiff was conducting the business under the said conducting agreements.

6. In my view, there is no merit in the above Civil Revision Application. The evidence on which the Learned Counsel sought to place reliance has been considered by the Courts below. In so far as the rent receipts on which much store was laid by the Learned Counsel for the Applicant. It is required to be noted that the said rent receipts have not

been proved in accordance with law. In so far as the words “on account of sub-tenancy” mentioned on the top of the rent receipts the Applicant states in his evidence that he was not aware as to who had written the said words. Hence, the reliance placed by the Learned Counsel on the said rent receipts is misplaced. Similarly, reliance placed on the Income Tax Clearance Certificate is also misplaced as the Income Tax Clearance Certificate has been issued for the purposes of obtaining a licence from the prohibition authorities and in fact the said certificate has been signed by the Plaintiff as conductor. How the said Income Tax Clearance Certificate furthers the case of the Applicant therefore begs an answer.

7. The Learned Counsel appearing on behalf of the Plaintiff i.e. the Applicant herein sought to place reliance on the judgment of the Apex Court reported in **(1989) 1 SCC 19** in the matter between **Smt. Rajbir Kaur and another Vs. M/s. S. Chokesiri and Co.**, in support of her contention that in a case where there were identical clauses in the agreement as in the present case the Apex Court had held that the agreement is a camouflage for a sub-tenancy. The Learned Counsel sought to juxtapose the clauses of the agreement in the instant case with the clauses of the agreement in the case before the Apex Court for the said purpose. In my view, though there is certain similarity in some of the clauses in the said two cases, the agreement in the instant case can be said

to be a different agreement than the agreement involved in the case before the Apex Court as certain clauses in the instant agreement are different. Moreover, in the case before the Apex Court there was evidence on record to show that the person in respect of whom subletting was alleged was doing business in his own right in respect of which there was cogent evidence on record. It is in the said context that the Apex Court held that the finding of the High Court as regards sub-tenancy cannot be faulted with. Such is not the case in the instant matter, as in the instant case there is hardly any evidence except the similarity in clauses which are sought to be relied upon to show that the Plaintiff was doing business in his own right. It is required to be noted that right from the year 1958 to the year 1982 as many as six agreements have been executed. It is required to be noted that the Plaintiff himself had filed the suit in the City Civil Court at Bombay being SC Suit No.2805 of 1983 for seeking injunction based on the said agreements. Another fact that cannot be lost sight of is that it is not as if Defendants have condescended to the business of the Plaintiff in the matter of changing the name of the hotel or introducing non-vegetarian food as the Defendants had filed LE & C suit against the Plaintiff for his eviction and have thereafter filed a suit in this Court seeking possession which has now been transferred to the City Civil Court on the pecuniary jurisdiction of the City Civil Court being enhanced.

Hence, the Defendants had taken the necessary steps to evict the Plaintiff. In the light of the concurrent orders passed by the Courts below, no case for exercise of the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]