

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

[1] Civil Revision Application NO. 343 OF 2016

Mohd. Israil Mohd. Swaleh	...Applicant
<i>Versus</i>	
Haji Naisar Ahmed Shabbir Ahmed And Ors	...Respondentss

WITH

[2] Civil Revision Application NO. 344 OF 2016

Abdul Hameed Mihammed Sharif	...Applicant
<i>Versus</i>	
Haji Naisar Ahmed Shabbir Ahmed And Ors	...Respondents

WITH

[3] Civil Revision Application NO. 346 OF 2016

Raees Ahmed Mohd. Yusuf And Anr	...Applicants
<i>Versus</i>	
Haji Naisar Ahmed Shabbir Ahmed And Ors	...Respondents

WITH

[4] Civil Revision Application NO. 347 OF 2016

Naeemur Rahman Hafeezur Rahman	...Applicant
<i>Versus</i>	
Haji Naisar Ahmed Shabbir Ahmed And Ors	...Respondents

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Mr.N.R. Bubna, Advocate for the Applicants.
Mr. Mahendra N. Sandhyanshiv, Advocate for Respondents No.1 to 3.

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CORAM : R. G. KETKAR, J.

DATE : 11th August, 2016

P.C.

1. Heard Mr. N.R. Bubna, learned Counsel for the applicants and Mr.M.N. Sandhyanshiv, learned Counsel for respondents No.1 to 3 in all the applications, at length.

2. By these applications under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') the applicants have challenged the judgment and decrees dated 29.2.2016 passed by the learned District Judge-1, Malegaon in different appeals arising from judgment and decrees dated 1.1.2014 passed by the learned 6th Jt. Civil Judge, Junior Division, Malegaon in different Suits. By these orders, the learned District Judge allowed the appeals preferred by the respondents, hereinafter referred to as the 'plaintiffs', and quashed and set aside the trial Court's decrees. The Suits instituted by the plaintiffs for recovery of possession of the premises more particularly described in the respective Suits were decreed on the ground of arrears of rent as also reasonable and bonafide requirement as contemplated under Sections 15 and 16 respectively of Maharashtra Rent Control Act, 1999 (for short, 'Act'). The defendants are directed to hand over possession of the suit property to the plaintiffs within three months from the date of order. The defendants are further directed to pay the arrears of rent, as specified in the orders, within three months from the date of order. Enquiry into the mesne profits was also ordered to be held under Order XX Rule 12 of C.P.C. from

the date of the decree till recovery of the possession. Cross-objections preferred by the defendants were rejected. As the common questions of law arise in these Civil Revision Applications, same can be conveniently disposed of by this common order.

3. For appreciating the controversy between the parties, the facts from Civil Revision Application No.343/2016 are considered in a representative capacity. The plaintiffs have instituted the suit for recovery of possession of shop premises admeasuring about 50 ft. X 12 ft. situate on the first floor out of C.T.S. No.1395/7, Islampura, Malegaon (for short, 'suit property') *inter alia* on the ground that oral partition was effected among the brothers in 1977 and area admeasuring 6888 sq. ft. out of City Survey No.1395/7 was allotted to plaintiffs father. The plaintiffs are the absolute owners and landlords of the area admeasuring 6888 sq. ft. out of City Survey No.1395/7, Islampura, Malegaon. The suit property situate in an area admeasuring 6888 sq.ft. was let out to defendant No.1 on monthly rent of Rs.1000/- as per Gregorian calender for business purpose. The suit property was originally let out to defendant No.1 Mohd. Khalid Ab. Hameed Azhari by the father of the plaintiffs, namely, Haji Shabbir Ahmed since deceased. During the lifetime of Haji Shabbir Ahmed, plaintiff No.3 used to collect the rent from defendant No.1

and other tenants. Defendant No.1 refused to pay the rent from 1.1.2006 and was in arrears to the tune of Rs.39,000/-. The plaintiffs issued demand notice dated 4.3.2009. After service of the demand notice, defendant No.1 failed to comply said notice. The plaintiffs further contended that plaintiff No.1 has eight sons out of them six are married and two are unmarried. He has three married daughters. Plaintiff No.2 has one married son and one unmarried son and one daughter. Plaintiff No.3 has three unmarried sons and two unmarried daughters. The plaintiffs, therefore, require the suit property reasonably and bonafide for the use and occupation of their family. As against this, the defendant has several alternate accommodations for his use and he is not in need of the suit property.

4. The plaintiffs further contended that in the first week of September, 2012 defendant No.1 has sub-let the suit property to defendant No.2 who is also a relative of the plaintiffs. Defendant No.1 had vacated the suit property and sub-let to defendant No.2 by charging heavy rentals. Defendant No.2 is in use and occupation of the suit property illegally. Suit property was sub-let to defendant No.2 by defendant No.1 without the consent and permission of the plaintiffs. On all these grounds, the plaintiffs instituted the suit against the defendants and the

applicant.

5. Defendant No.1 resisted the suit by filing written statement on 25.7.2013. Defendant No.2 also filed written statement on 11.2.2013 opposing the suit *inter alia* on the ground that the suit property is owned by defendant No.1 and his father. It is their self-posessed property and consequently question of taking it on rent basis does not arise. Reference was also made to earlier suit instituted by the plaintiffs bearing Regular Civil Suit No.248/2005 for possession *inter alia* contending that an area admeasuring 6888 sq. ft. from C.T.S. No.1395/7 was allotted to the plaintiffs in the oral partition. Though in the written statement it was contended that the suit is pending, it is common ground that it was eventually withdrawn. Defendant No.2 contended that there is no relationship of landlord and tenant between the parties. Defendant No.1 was neither a tenant nor in possession of the suit property. Defendant No.1 had no connection with the suit property as a tenant and consequently question of sub-letting suit property to defendant No.2 does not arise. As there is no relationship of landlord and tenant between the plaintiffs and defendant No.2, the suit itself is not maintainable. Defendant No.2 further contended that he is in possession of the suit property for more than 50 years. Defendant No.2 further contended that entire plot No.14 of Survey

No.1395/7 was exclusively owned and possessed by Mohammed Ishaque alone, since deceased. The case put up by the plaintiffs about oral partition and possession was denied by contending that at no point of time an area admeasuring 6888 sq. ft. located at East-West portion of southern side was allotted to the father of the plaintiffs. The entries of partition amongst four brothers as alleged in City Survey record and alleged partition is totally illegal and is nothing but false record.

6. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. Parties led evidence. After considering the evidence on record, the learned trial Judge dismissed the suit mainly on the ground that there is no relationship of landlord and tenant between the plaintiffs and defendant No.1. The learned trial Judge also held that the plaintiffs did not establish that defendant No.1 is a defaulter and that the suit premises are reasonably and bonafide required by them. The learned trial Judge also held that plaintiffs failed to prove that defendant No.1 has unlawfully sub-let the suit property to defendant No.2.

7. Aggrieved by this decision, the plaintiffs preferred appeal. Defendant No.2 filed cross-objection at Exhibit-11 challenging the finding of the trial Court to the extent of finding as regards title. Defendant No.2 contended that the

learned trial Judge should have held that the defendants have established that they are the owners of the suit property.

8. By the impugned judgment and decree dated 29.2.2016, as noted earlier, appeal is allowed by the learned District Judge. It is against this order, defendant No.2 has instituted Civil Revision Application No.343/2016.

9. In support of these applications, Mr. Bubna strenuously contended that the plaintiffs have produced photocopies of the rent receipts. None of the receipts bear signature of the tenant. The rent receipts are forged and fabricated. He submitted that the plaintiffs came with the case that they had issued N.O.C. for obtaining electricity connection from M.S.E.B. He submitted that there was no occasion for issuing N.O.C. as electricity was all along available. The plaintiff did not enter into the witness box though he was mentally and physically fit and examined his son as power of attorney. He has taken me through the evidence of plaintiffs' witness as also the findings recorded by the learned trial Judge in paragraphs-12, 17, 18 and 23. He submitted that basically the plaintiffs did not establish the fact of partition as also allotment of 6888 sq. ft area out of C.T.S. No.1395/7 to them during the partition. The plaintiffs also failed to establish that the suit property is situate in an area admeasuring 6888 sq. ft.. He has also

invited my attention to the measurement plan No.5 of 1994 to substantiate that the suit property is not situate in C.T.S. No.1395/7. Lastly Mr. Bubna submitted that the plaintiffs had instituted Regular Civil Suit No.248/2005 against father of defendant No.2 alleging that in the oral partition, land admeasuring 6888 sq. ft. out of C.T.S. No.1395/7 was allotted. He submitted that the suit was withdrawn by the plaintiffs as they apprehended that they will not be in a position to establish theory of oral partition. He, therefore, submitted that the present Suit is not maintainable and the learned District Judge ought to have dismissed the suit. For all these reasons, he submitted that the applications require consideration.

10. On the other hand Mr. Sandhyanshiv has supported the impugned orders. He has invited my attention to the admissions given by the defendant's witnesses, namely, DW-2 and DW-3 during the course of cross-examination as also Exhibits-39, 40, 41 and 42. He submitted that in the trial Court photocopies of rent receipts were produced. During pendency of the appeal, the plaintiffs filed application under Order XLI Rule 27 of C.P.C. for producing original receipts and that application was allowed. In other words he submitted that the plaintiffs established the relationship of landlord and tenant between the plaintiffs and defendant No.1. The very

fact that defendant No.2 admitted his possession, required defendant No.2 to establish that they are lawfully inducted in the suit property. Having failed to do so, the Appellate Court rightly decreed the suit.

11. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The moot question is whether the plaintiffs have established the oral partition that took place in the year 1977 and that area admeasuring 6888 sq. ft. from City Survey No.1395/7 was allotted to the share of plaintiffs father. It is in that context material to go through the application dated 16.2.1977 made to the City Survey Officer, Malegaon Camp. That application was made by (i) Maulana Mohd. Isahaq Mohd. Yusuf, (ii) Mohd. Ibrahim Mohd. Yusuf, (iii) Mohd. Akhub Mohd. Yusuf and (iv) Shabbir Ahmed Mohd. Yusuf, father of plaintiff No.1. They are the real brothers. They made application to the City Survey Officer setting out therein that the partition was effected amongst them by metes and bounds and also enclosed partition map along with the application. In that application, the area allotted to each brother was set out which is to the following effect :

Sr. No.	Name	Area allotted
1.	Maulana Mohd. Isahaq Mohd. Yusuf,	10008 sq.ft.
2.	Mohd. Ibrahim Mohd. Yusuf,	5741 sq.ft.

3.	Mohd. Akhub Mohd. Yusuf	8025 sq. ft.
4.	Shabbir Ahmed Mohd. Yusuf, father of plaintiff No.1.	6888 sq. ft.

12. In pursuance of that application, on 4.3.1977, an order was passed by City Survey Officer, Malegaon which was produced at Exhibit-40. During the course of enquiry, the statements were recorded before the City Survey Officer. After considering the material, he ordered to record entries in pursuance of the partition effected amongst four brothers. As far as the plaintiffs are concerned, southern side east-west portion admeasuring 6888 sq. ft. was allotted to them. The order also recorded that the partition is effected by metes and bounds and each sharer is in possession of his respective share. The plaintiffs also produced extract of Property Register Card Exhibit-41 showing that after the death of Shabbir Ahmed Mohd. Yusuf on 8.7.2005, name of his heirs (plaintiffs herein) were recorded.

13. Perusal of evidence of defendant's witness shows that they were confronted with the documents at Exhibits-39 and 40. DW-2 Mohammed Israil Mohammed Swaleh deposed that an area admeasuring 6888 sq. ft. from City Survey No.1395/7 was never allotted to the plaintiffs and consequently they are not the owners. In paragraph-7 of examination-in-chief, he deposed that initially plot No.14,

Survey No.1395/7 originally belonged to Mohammed Ishaq Mohammed Yusuf Momin. However, the plaintiffs have falsely contended that in the partition an area admeasuring 6888 sq. ft. was allotted to the plaintiffs and accordingly entries were made in the Record of Rights. He further deposed that as City Survey No.1395/7 was the self-acquired property of Mohammed Ishaq Mohammed Yusuf Momin, there was no question of partition or giving shares to his brothers. In short, DW-2 deposed that there was no partition amongst four brothers and during that partition an area admeasuring 6888 sq. ft. was not allotted to Shabbir Ahmed Mohd. Yusuf. In fact Mohammed Ishaq Mohammed Yusuf Momin had purchased City Survey No.1395/7 by a registered sale deed dated 22.1.1946 from Kalu Sakharam Khairnar.

14. During the course of cross-examination, he was confronted with Exhibit-40, namely, the order dated 4.3.1977. He admitted that he did not file appeal against that order. He further deposed that the dispute is in respect of an area admeasuring 6888 sq. ft. of Shabbir Ahmed Mohd. Yusuf in City Survey No.1395/7.

15. As far as DW-3 Abdul Ajij Mohammed Ishaq is concerned, he deposed that he is not aware of order dated 4.3.1977 passed by the City Survey Officer. He however volunteered and stated that said entry is fictitious. He

admitted that after the death of Moulana Mohd. Ishaq, some share in City Survey No.1395/7 was inherited by Mohd. Saleh.

16. Perusal of Exhibits-39 and 40 as also the extract of Property Register Cards Exhibits-41 and 42 clearly establish that in the year 1977, the partition was effected amongst four brothers and an area admeasuring 6888 sq. ft. out of total one acre and ten gunthas of City Survey No.1395/7 was allotted to Shabbir Ahmed Mohd. Yusuf. Defendants No.1 and 2 have not challenged order dated 4.3.1977 passed by the City Survey Officer. That order was passed in pursuance of the application made on 16.2.1977 and after recording the statements. In view thereof, I do not find that the District Court committed any error in holding that the plaintiffs have established partition as also that an area admeasuring 6888 sq. ft was allotted to Shabbir Ahmed Mohd. Yusuf during the partition of 1977.

17. Perusal of the trial Courts order shows that the plaintiffs have produced rent receipts at Exhibits-47 to 49 issued to defendant No.1 for establishing the relationship of landlord and tenant. Though the original rent receipts were not filed, those documents were exhibited i.e. the same were referred by Advocate of defendant No.1 in the cross-examination of PW-1. The plaintiffs thereafter filed application under Order XLI Rule 27 of C.P.C. before the

District Court and the same was allowed and original receipts were produced at Exhibits-56A to 56C as also no-objection/consent letter Exhibit-53. After considering the documents on record and more particularly Exhibits-39, 40, 41, 42 as also rent receipts at Exhibits-56A to 56C, District Court held that there is relationship of landlord and tenant between the plaintiffs and defendant No.1. This aspect is discussed in paragraphs-9 to 12. The learned District Judge observed that the counter foils of rent receipts books clearly show that defendant No.1 was paying regularly an amount of Rs.1200/- per month from 1.1.2005 to 31.12.2005. Eventually in paragraph-15, the learned District Judge recorded that there exists relationship of landlord and tenant between the parties. In paragraph-19, the learned District Judge observed that defendant No.1 did not pay rent from 1.1.2006. Defendant No.1 did not comply the requirements of Section 15 and accordingly held that the plaintiffs have established the ground under Section 15 of the Act.

18. As far as the ground of bonafide requirement as also comparative hardship under Section 16(1)(g) of the Act is concerned, the learned District Judge has considered this aspect in paragraphs-22 and 23 and answered in favour of the plaintiffs. The learned District Judge, however, declined to pass the decree on the ground of sub-

letting under Section 16(1)(e). Thus after appreciating the evidence on record, the learned District Judge decreed the suit under Sections 15 and 16(1)(g) of the Act. Mr. Bubna submitted that the plaintiffs had instituted Regular Civil Suit No.248/2005 against father of defendant No.2 alleging that in the oral partition, land admeasuring 6888 sq. ft. out of C.T.S. No.1395/7 was allotted. He submitted that the suit was withdrawn by the plaintiffs as they apprehended that they will not be in a position to establish theory of oral partition. He, therefore, submitted that the present Suit is not maintainable and the learned District Judge ought to have dismissed the suit. I do not find any merit in this submission as I have already held that the plaintiffs have established oral partition by producing documents at Exhibits-39 to 42. After considering the submissions advanced by Mr. Bubna as also after perusing the original record, I am more than satisfied that the learned District Judge was justified in passing the decree of eviction. The defendant was not in a position to demonstrate that the findings recorded by the District Court are perverse being based on no evidence or that they are contrary to evidence on record. The defendant was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the District Court. Hence no case for invocation of powers under Section 115 of

C.P.C. is made out. Civil Revision Applications fail and the same are dismissed with no order as to costs.

19. At this stage, Mr. Sandhyanshiv states that the applicants have deposited amount in this Court and he seeks permission to withdraw that amount. Mr. Bubna opposes this prayer. As the District Court has decreed the suits and which orders are confirmed by me, I see no good reason for not permitting the plaintiffs to withdraw the amount so deposited by the defendant. Hence, the plaintiffs are allowed to withdraw the amount so deposited by the defendant in this Court unconditionally. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)