

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

WRIT PETITION NO. 2570 OF 1994

Sundarabai Dattatraya Kshirsagar (since
deceased by heirs & legal representative)

Nagnath D. Kshirsagar,
House No.4079/A,
Bhosale Chowk, Pandharpur,
District- Solapur 413 304

... Petitioner.

V/s.

Ganpat Baburao Rajput (since
deceased by his heirs)

1. Ramsing Ganpatsingh Rajput
age 60 years, occ. Nil,
R/a Khiste Galli, Pandharpur.
2. Gangubai Ganpatsingh Rajput (since
deceased through legal heirs)
 - 2A. Ramsingh Ganpatsingh Rajput
(since deceased through legal heirs)
 - 2A-1. Dattusingh Ramsingh Rajput,
Age 58 years, Occ: Business.
 - 2A-2. Natayansingh Ramsingh,
Age: Adult, Occ; Business.

2A-3. Shyambai Mahavirsingh Raput,
Age: Adult, Occ: Household.

2A-4. G.B.Hemabai Prakashsingh Gauram,
Age: Adult, Occ: Household.

2A-5. Seema Madhurajsingh Chandale,
Age: Adult, Occ: Household.

2A-6. Meena Randhirsingh Dixit,
Age: Adult, Occ: Household.

Respondent Nos.2A-1 to 21-6

R/a. Khiste Galli, Near Shree Virde's Shop,

Govindpura Mukam Post,

Taluka Pandharpur, District Satara.

...

Respondents.

Sarang Aradhye for the petitioner.

Ajay A. Joshi for the respondents.

CORAM : D.H.WAGHELA, C.J.

DATE : 27th July 2016.

ORAL JUDGMENT :

The petition was earlier dismissed on 23rd April 2015 for non-prosecution and thereafter by condoning delay in filing application for restoration, the writ petition was restored by an order

dated 18th July 2016 on the basis of the submission and condition that the petition would be peremptorily listed for hearing on 25th July 2016 for final disposal.

2. The petition is expressly filed under Article 227 of the Constitution after Regular Civil Suit No.313/1978 being partly decreed with direction to the petitioner herein to hand over possession of the suit premises to the original plaintiff within one month. After disposal of that suit by judgment and order dated 28th April 1988, the petitioner had preferred Civil Appeal No.554/1989 which was dismissed with costs on 27th June 1994. The present petition is filed with a prayer to quash the aforesaid both judgments and orders against the petitioner. The original plaintiff, Ganpat Baburao Rajput who died during the pendency of the suit was the owner of the premises bearing CTS No.4079 of Pandharpur and out of that house northern portion admeasuring East-West 20 ft. and North-South 25 ft. was in possession of the petitioner as tenant on yearly rent of Rs.150/-. The plaintiff had filed the suit for recovery of arrears of rent and possession of suit premises from the defendant/ tenant i.e. the petitioner herein under sections 12; 13(1)(a); 13(1)(b); and 13(1)(g) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 ("Rent Act" for short). The learned Civil Judge had framed eight issues in the suit and decided in affirmative the issues regarding subletting of the suit premises,

construction of permanent nature in the suit premises without consent of the plaintiff, and validity of the legal notice issued to the petitioner. Against the said decree an appeal was preferred by the petitioner herein. The main point arising for consideration in the appeal was as to whether the appellant had proved that the findings of the learned trial Judge regarding issue of subletting the suit premises and making permanent construction over the suit premises were erroneous. The said point was again decided against the petitioner. In the course of discussion of evidence on record, it is specifically recorded in the impugned judgment by the appellate Court that only open space was leased to the tenant and, at the most, the tenant was allowed to construct one room over the suit premises for his residence. The extension of the another room on the premises only meant that it was constructed by the appellant/petitioner and there was no reason to disbelieve the report of the Court Commissioner which referred that there was a godown over the suit premises which contained some gunny bags. Admittedly, the appellant was not in the business of gunny bags or ropes. According to the report of the Commissioner, the material belonged to one Mr.Kaulwar who was using some of the portion of the suit premises as godown which meant that the appellant had sublet the suit premises. It was also an admitted fact that the husband of the original tenant had passed away and his widow was running a business of selling fire woods. Having confirmed the findings of fact

in appeal regarding subletting and making of construction over the suit premises, the appellate Court did not find any reason to interfere with the order of the trial Court and dismissed the appeal.

3. Mr.Aradhya, learned counsel for the petitioner sought to argue on the basis of pleadings of the parties and evidence on record that the findings of fact recorded by both the lower courts were erroneous and that different inference could be drawn to hold that the grounds for eviction were not made out against the petitioner herein.

4. Not only that the findings of fact recorded in the impugned judgment were not even assailed as perverse but the limited scope of scrutiny under Article 227 of the Constitution would not permit re-appreciation of evidence for arriving at any findings of fact different from those recorded in the impugned judgments. As held by the Apex Court in ***Bathutmal Raichand Oswal v. Laxmibai R. Tarta***, (1975) 1 SCC 858, re-appreciation of evidence for the purpose of correcting any alleged error of fact would amount to overstepping the limits of its jurisdiction under Article 227 of the Constitution by the High Court. It would not be open to the High Court to question the propriety or reasonableness of the conclusion, drawn from the evidence, by the trial Court and the appellate Court. It is only, if there were an error of law apparent on

face of the record, that ground for interference could possibly be made out.

5. In the facts of the present case, no legal error much less an error apparent on the face of the record is made out in the petition or in the oral submissions of learned counsel for the petitioner. Therefore, the petition is dismissed and the interim relief granted earlier is vacated, with no order as to costs.

CHIEF JUSTICE