

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 342/2015
WITH
CIVIL APPLICATION NO.177/2016

Mr. Sidharthkumar Paltoo Ram

... Applicant

V/s.

M/s. Rainbow Real Estates Pvt. Ltd.

... Respondent

Mrs. Leela D.Malu i/b. Leela D. Malu & Associates for the Applicant
Mr. Shailendra Singh i/b. J. P. Consultia for the Respondent.

CORAM: K.K. TATED, J.

DATED : APRIL 6, 2016

PC. :

1. Heard the learned counsel for the parties. By this Civil Revision Application, the applicant defendant challenges the concurrent findings of fact recorded by both the courts below.
2. For the sake of brevity, the parties will be referred to as per their nomenclature in the suit i.e. applicant - defendant and respondent – plaintiff.
3. The plaintiff filed RAE & R Suit No.1416/2094/2006 against the defendant for vacant and peaceful possession of the suit premises i.e. Room No.22 in Parsi/New Parsi Chawl, Dharavi Road, Dharavi, Mumbai – 400 017 on the ground that the defendant carried out unauthorised construction, change of user and created third party right, title interest

in respect of the suit property. In that suit, the defendant filed written statement and resisted the matter. On the basis of pleadings, the trial court held that the defendant failed to prove that the land of the suit premises has been declared as slum under the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 and plaintiff has not taken any permission from the competent authority to file the suit. The trial court decreed the suit on the ground that the defendant has carried out renovation work without permission of the landlord. The trial court, by judgment and decree dated 07.08.2012 decreed the suit partly directing the defendant to handover vacant and peaceful possession of the suit premises to the plaintiff within 3 months from the date of passing of the said order.

4. Being aggrieved by the said order, the defendant preferred appeal being No.27/2014 before the Appellate Bench of the Small Causes Court, Mumbai, which was dismissed by the Appellate Court on the ground that the plaintiff proved the fact that the defendant has carried out renovation and repairs of the permanent nature in the suit premises without consent in writing from the plaintiff / landlord. Hence, the Civil Revision Application.

5. The learned counsel for the defendant submits that the judgment and decree passed by both the courts below are against justice, equity and good conscience and same is liable to be set aside. The main contention raised by the applicant in the Civil Revision Application is as under:

- a. The suit structure where it is situated, was declared as slum. Hence, in view of the section 22 of the the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, the civil court has no jurisdiction to take cognizance of the matter.
- b. The competent authority issued photo pass in respect of the suit premises being Identity Card No.17-DH-GN-001441 (A copy of the said identity card is taken on record and marked "X" for identification.)
- c. The plaint was not affirmed by the competent officer of the plaintiff.
- d. The plaintiff has not disclosed in the plaint which type of unauthorised construction was carried out by the plaintiff.

6. The learned counsel for the defendant submits that all these points were not considered by both the courts below and therefore, the judgment and decree passed by both the courts below deserves to be set aside.

7. The learned counsel for the defendant relied on several documents to justify that the property is situated in the area which is declared as slum. It is to be noted that, all the documents placed on record by the defendant are in respect of the CTS No.530, Dharavi, Mumbai – 400 017. Whereas the plaintiff in his plaint specifically stated that the suit premises is situated in CTS No.1/530, Dharavi Division, Dharavi, Mumbai – 400 017. Not a single document is placed on record by the defendant to show that the CTS No.1/530 situated at Dharavi, Mumbai was declared as slum. Hence, the defendant failed to satisfy that the suit property is situated in slum area.

8. The photo pass being No.17-DH-GN-001441 cannot be considered in the present proceedings, because same was cancelled by the competent authority by order dated 05.02.2007. Photocopy of order dated 05.02.2007 is taken on record and marked "X1" for identification.

9. Another point raised by the advocate for the defendant that the plaintiff has not disclosed in the plaint as to which type of unauthorised construction has been carried out by the defendant is also not maintainable. It is to be noted that, the plaintiff in para 6 and 7 of the plaint specifically stated the unauthorised construction carried out by the defendant. Apart from that the defendant in his cross-examination admitted that they already carried out unauthorised construction. Some portion of the cross-examination of the defendant reads thus:

"It is true to say that I have constructed mezzanine floor in the suit premise. It is true to say that I have carried out repairs like water leakage etc. from my own expenses. I have made cement flooring. It is not true to say that due to the said construction, an area of the suit premises is increased. It is true to say that I have constructed staircase outside the suit premises. I had deposited the rent of the suit premises upto the year 2007 in the court. At present those deposit receipts are not with me. Now, demand notice (exhibit 27 and 28) is shown to me. After the year 2007 I had not paid any rent of the suit premises. I do not know the demand notice (exhibit 27 and 28). As nobody came to me for collecting the rent, I had not paid it. I do not remember whether I have received the said demand notice or not. I do not know Mr. Anthony. Since 1960 I am residing in the suit premises along with my father. Earlier my father was tenant in the suit premises."

10. This Court in the matter of *V.Sumatiben Maganlal Manani (dead) by L.Rs. Vs. Uttamchand Kashiprasad Shah and Anr. 2011 (6) MLJ 1* held that the High Court, in exercise of its revisional jurisdiction, should not interfere with the findings of facts properly arrived at by the courts below. In the matter of *Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100* the Apex Court held that it is not permissible to the High Court to reappraise and re-appreciate the evidence for reaching a different finding in revisional jurisdiction. In the matter of *Sunilkumar and Anr. Vs. Anilkumar 2008 (9) SCC 241* the Apex Court held that normally, the High Court should not interfere with the concurrent findings of fact in Rent Act matters unless and until the orders passed by the courts below are perverse and contrary to law.

11. Considering the submissions made by the learned counsel for the defendant, after perusing the impugned judgment and decree passed by both the courts below, cross-examination of the defendant, documents placed on record and the law declared by courts as stated hereinabove, I am of the opinion that the defendant has failed to make out any case to interfere with the impugned judgment and decree passed by both the courts below. Hence, the Civil Revision Application stands rejected.

12. Consequently, the civil application stands dismissed as infructuous.

(K.K. TATED, J.)