

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.459 OF 2015

Shri Subhash Baburao Kamthe and Ors. .. Applicants

vs.

Shri Martand Haribhau Mandhre & Ors. .. Respondents

Mr.Jitendra M. Pathade for the applicants

CORAM : K. K. TATED, J.
DATE : APRIL 12, 2016

P.C.:

- 1 Heard the learned counsel for the applicant.
- 2 This Civil Revision Application is preferred by original defendants challenging the concurrent finding of fact recorded by both the courts below.
- 3 For the sake of convenience, the nomenclature of the parties as is stated in the suit will be referred to hereinafter i.e. the applicants as defendants and respondents as plaintiffs.
- 4 The plaintiffs filed Civil Suit No.376 of 2006 for possession of the suit property i.e. House No.501, Rasta Peth, Pune. The suit was filed by the plaintiffs on the ground of bonafide requirement. It was the case of

the plaintiffs that plaintiffs were residing in one room admeasuring 10' x 10' and because of extention of their family they filed suit for possession of the premises. The defendants filed written statement and opposed the same. The Trial Court as well as Appellate Court after considering the evidence on record held that the plaintiffs made out a case for decree for possession. Both the courts categorically held that the defendants have their independent three properties at Pune. Apart from that both the courts held that the defendant sold one property to Hemant Chandrakant Chowdhary by agreement dated 6.2.2007 Exhibit-75 for Rs.6,60,000/-. Both the courts concurrently held that the defendants have their premises at 501, Rasta Peth, Pune. Even the defendant no.1 was having independent residence at Survey No.47, Gut No.5, Yerawada Pune. In addition to that defendant nos.1 to 3 purchased spacious flat no.3 in Green Hold Society A-1 building, 3rd floor admeasuring 600 sq.fts. at Vadgaon Dhayari in the name of defendant no.3. In addition to that, defendants have two storeyed premises situated at Survey No.14, Ramnagar, Yerawada, Pune. These facts were recorded by the appellate court in paragraph 3(v) which reads thus:

“3]v] Defendant no.1 was temporarily residing in the suit premises whereas, defendant nos.2 and 3 were residing at 501, Rasta Peth, Pune. Even, defendant no.1 was having independent residence at Survey no.47, Gat no.5 Yerawada, Pune. In addition thereto, defendants nos.1 to 3 purchased spacious flat no.3, in Green Hold Society, A-1 building, 3rd floor, at Vadgaon Dhayari in the name of defendant no.3. Said flat was admeasuring 600 sq.fts. The defendants in addition to above accomodation, also possessed three rooms with maxenine floor at 501 Rasta Peth, Pune and two storeyed premises situated at Survey no.14, Ramnagar,

Yerawada, Pune.

3]vi) In the family of plaintiff, in all there was six members including his wife, son, daughter-in-law and two grand children. Both the grand children are taking education and the plaintiff was suffering with the problem of paucity of living space as he is having only one room having dimension of 10' x 10' with mezanine floor. Therefore, the plaintiff bonafidely required the suit premises for his own use and occupation.

3]ix] It is further averred that, the defendants demolished the wall and fitted water connection there. Furthermore, the defendants damaged gutter and by using cement, blocked the same and thereby caused nuisance to the plaintiff. It is also averred that, the defendants by using the suit premises for washing the vehicles and due to the same, oil mixed soil accumulated around the premises, which caused menace of mosquitoes.”

5 Considering these facts both the courts passed the decree of possession in favour of plaintiff. Hence, the present Civil Revision Application.

6 The learned counsel for the defendants submits that both the courts below failed to consider evidence on record properly. He submits that though it was recorded by the courts below that the defendant sold one premises to Hemant Chandrakant Chowdhary by agreement dated 6.2.2007 Exhibit-75 for Rs.6,60,000/-. Same is not correct. He submits that as the defendants were not in position to pay the remaining price of the suit premises, that constrained them to enter into agreement Exhibit-75 for Rs.6,60,000/-. He further submits that in the premises at Wadgaon defendant no.2's mistress is staying. Hence,

both the courts failed to consider the necessity of the defendant in respect of tenanted premises. Therefore, even if there is a concurrent finding of fact recorded by both the courts, this Hon'ble Court be pleased to set aside the same.

7 I have heard the learned counsel for the applicant at length. I have gone through the copy of plaint, written statement, deposition of parties, judgment and decree passed by both the courts below and other documents.

8 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.

9 It is to be noted that in the present proceeding the plaintiff is residing in one room admeasuring 10' x 10' whereas the defendant acquired four properties in their name. Apart from that they disposed of their one property by agreement dated 6.2.2007 Exhibit-75 for

Rs.6,60,000/- to Hemant Chandrakant Chowdhary. This itself shows that the defendant does not require the suit premises, whereas the plaintiff is residing in one room admeasuring 10' x 10' only. These facts are admitted by the defendant no.2 in his cross-examination. It is to be noted that neither defendant no.1 nor defendant no.3 entered into witness box. Defendant no.2 in his cross-examination admitted that his father acquired three rooms on rental basis in the year 1976.

10 Considering the above mentioned facts and the law declared by the Apex Court I do not find any reason to entertain the present Civil Revision Application to set aside the concurrent finding of facts recorded by both the courts below. Hence, Civil Revision Application is rejected.

JUDGE