

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.478 OF 2015

Ramani Keshav Naidu ... Applicant
Vs.
M/s. Shikhar Developers and others ... Respondents

WITH
CIVIL REVISION APPLICATION NO.526 OF 2015

Shantabai Kanna Naidu (decd) Ramani Keshav
Naidu ... Applicant
Vs.
M/s. Shikhar Developers and others ... Respondents

Mr. J. M. D'Silva for Applicant.
Mr. Kiran Jain a/w. Mr. Rajan Yadav a/w. Mr. Ish Jain i/b. Kiran Jain & Co.
for Respondents No.1 to 6 and 8.

CORAM : R. G. KETKAR, J.
DATE : JUNE 16, 2016

P.C. :

Heard Mr. D'Silva, learned Counsel for applicant and Mr. Jain, learned Counsel for respondents No.1 to 6 and 8 in both the Applications at length.

2. C.R.A. No.526 of 2015 is directed against the judgment and decree dated 07.05.2015 passed by the appellate Bench of the Court of Small Causes at Mumbai in Appeal No.31 of 2008. By that order, the appellate Court allowed the appeal preferred by original defendants No.5, 6 and 7 and quashed and set aside the judgment and decree dated 07.09.2007 passed by the learned Judge, presiding over Court Room No.12 of the Court of Small Causes at Mumbai in R.A.D. Suit No.342 of 1997. The appellate Court dismissed the said Suit. R.A.D. Suit No.342 of 1997 was instituted by Ms Shantabai Kanna Naidu, since deceased, hereinafter referred to as 'original plaintiff'. She was the

widow of original tenant Kanna Naidu, since deceased. Original plaintiff had instituted the Suit for declaration of tenancy rights and for handing over possession of room No.1, Sawant Bhavan, Gokuldas Pasta Road, Dadar, Mumbai - 400 014 (for short 'suit premises'). During the pendency of the Suit, original plaintiff expired. Applicant, hereinafter referred to as 'plaintiff', claims to be niece of original plaintiff as also is the Constituted Attorney of the original plaintiff. Being the legal heir of the original plaintiff, the plaintiff was brought on record in the Suit. The learned trial Judge decreed the Suit and declared that plaintiff is a tenant under Section 5(11)(c)(ii) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') in respect of the suit premises and consequently, in respect of premises admeasuring 380 sq.ft. in which newly reconstructed building in lieu of the suit premises. Defendants were directed to put the plaintiff in the vacant and peaceful possession of the premises admeasuring not less than 380 sq.ft. in the newly constructed building reserved in lieu of the suit premises within three months from the date of the decree.

3. Aggrieved by this decision, defendants No.5, 6 and 7 preferred Appeal. By the impugned order, the appellate Court allowed the Appeal as indicated earlier. It is against this decision, plaintiff has instituted C.R.A.No.526 of 2015 under Section 115 of C.P.C.

4. C.R.A.No.478 of 2015 is directed against the judgment and decree dated 07.05.2015 passed by the appellate Bench of the Court of Small Causes at Mumbai in Appeal No.38 of 2008. By that order, the appellate Court allowed the appeal preferred by the original defendants No.5, 6, 7, 8, 2 and 3 and quashed and set aside the judgment and decree dated 07.09.2007 passed by the learned Judge, presiding over Court Room No.12 of the Court of Small Causes at Mumbai in R.A.D. Suit

No.341 of 1997. The appellate Court dismissed the Suit. R.A.D.Suit No.341 of 1997 was instituted by Ms Ramani Keshav Naidu. She is the daughter of Ratnabai Gopal Naidu, who was the original tenant in Room No.5-B, Sawant Bhavwan, Gokuldas Pasta Road, Dadar, Mumbai 400 014 (for short 'suit premises'). Said Ratnabai died at Mumbai on or about 28.04.1993 leaving behind plaintiff as a sole surviving heir and legal representative. Plaintiff is, therefore, entitled to inherit the property left behind by said Ratnabai. Ratnabai's husband Gopal Radhakrishna Naidu had predeceased her at Chennai in or about the year 1956. The learned trial Judge decreed the Suit and declared that plaintiff is a tenant under Section 5(11)(c)(ii) of the Act in respect of the suit premises and in respect of premises admeasuring 225 sq.ft. in a newly reconstructed building in lieu of the suit premises. Defendants No.1, 2 and 5 to 8 were directed to transfer the rent bill of the suit premises in the name of the plaintiff and further defendants No.5 to 8 were directed to put the plaintiff in the vacant and peaceful possession of the premises admeasuring not less 225 sq.ft. in the newly reconstructed building reserved in lieu of the suit premises within 3 months from the date of the decree. Aggrieved by that decision, defendants No.5, 6, 7, 8, 2 and 3 preferred appeal, which is allowed by the appellate Court as indicated earlier. It is against this decision, plaintiff has instituted C.R.A.No.478 of 2015 under Section 115 of the C.P.C.

5. In support of C.R.A.No.478 of 2015, Mr. D'Silva strenuously contended that during the course of cross-examination of P.W.1 - Ms Ramani Keshav Naidu in R.A.D. Suit No.341 of 1997, she was confronted with letter dated 15.12.1992. She deposed that the said letter does not bear the signature of her mother Ratnabai (original tenant). As P.W.1 denied signature of her mother on the said letter, the said letter was kept for identification at 'Y'. In other words, he submitted that the

said document was not admitted in evidence and marked as exhibit. He submitted that D.W. Shivanand Damodar Shanbhag deposed in paragraph 5 of the affidavit in lieu of examination-in-chief that by letter dated 15.12.1992, Ratnabai gave her no objection to transfer the rent receipts in respect of the then Room No.5-B in favour of Mr. Jayant Manohar Surve. He stated that the said letter was typed in his presence and was signed by Ratnabai in his presence and in presence of defendant No.8 Rajendra Champalal Jain. He identified the signature of Ratnabai on the said letter as signature of Ratnabai.

6. Mr. D'Silva submitted that the learned trial Judge did not mark that letter as exhibit and thus, it was not admitted in evidence. As it was not admitted in evidence, there was no question of cross-examining D.W. Shivanand Shanbhag. If the plaintiff were to cross-examine D.W. Shivanand Shanbhag on this letter, certainly, the said letter could have been marked as exhibit and would have been admitted in evidence. He invited my attention to paragraph 26 of the impugned order. The appellate Court observed that as the said letter is proved by the defendants, it was admissible in evidence. The appellate Court, therefore, at the time of pronouncement of judgment, exhibited and marked the said letter as 'exhibit-Y' to avoid the confusion in exhibiting the document. He submitted that the course adopted by the appellate Court was totally perverse and was without giving any opportunity to the plaintiff to cross-examine the witness. He submitted that as the appellate Court committed serious error in marking that document as exhibit and admitting that document, application requires consideration.

7. On the other hand, Mr. Jain supported the impugned order. He invited my attention to paragraph 13 of the impugned order wherein the appellate Court has considered the cross-examination of P.W.1 Ramani

where she admitted that she has no documentary evidence to show that she was residing in suit premises till November 1996. She admitted that defendant No.2 (landlord) did not issue rent receipts at any time in her name. She admitted that in the month of May 1993, defendant No.4 (Surve) and his wife were residing in the suit premises. She did not inform to Police that defendant No.4 and his wife were domestic servants residing in the suit premises. She admitted that name of defendant No.4 is included in the ration card issued in the name of her deceased mother Ratnabai (exhibit-3). She also admitted the identity of photographs of defendant No.4 at various functions of their family, which are produced at exhibits - 4 to 6. She further admitted that defendant No.4 with his wife were residing in the suit premises along with her mother before her death and that son of defendant No.4 was born in the suit premises in the year 1991.

8. She further categorically admitted that at the time of death of her mother, defendant No.4 with his wife was residing in the suit premises and defendant No.4 was treated as son. After considering the admissions given by the P.W.1 during the course of cross-examination, the appellate Court held that in the first place, plaintiff did not establish that she was residing in the suit premises at the time of death of Ratnabai and secondly, whether defendant No.4 (Surve) was residing in the suit premises as family member of Ratnabai at the time of her death or not. The appellate Court referred to Section 5(11)(c)(i) of the Act. After considering the evidence on record, the appellate Court held that plaintiff, though is daughter of Ratnabai - original tenant, was not residing in the suit premises. As against this, from the evidence on record, it is established that defendant No.4 Surve from his childhood till his marriage as also after marriage was residing in the suit premises with his wife. Defendant No.4 was treated as an adopted son by the

original tenant Ratnabai. His name was also included in the ration card. Thus, defendant No.4 was treated as a member of family and was residing at the time of death of the tenant. The original tenant Ratnabai died in Mumbai on or about 28.04.1993. In view thereof, I do not find that the appellate Court has committed any error while allowing Appeal No.38 of 2008.

9. In support of C.R.A.No.526 of 2015, Mr. D'Silva submitted that Kanna Govind Naidu was the tenant of the suit premises. He died on 20.03.1989 leaving behind widow Shantabai. Shantabai inherited tenancy from her husband. She instituted R.A.D.Suit No.342 of 1997 for declaration of tenancy rights in respect of the suit premises. During the pendency of the Suit, original plaintiff Shantabai expired and plaintiff - Ramani is niece of the original plaintiff. Being the heir of the original plaintiff, she is entitled to declaration of her tenancy rights and consequently, premises admeasuring 380 sq.ft. in the newly reconstructed building in lieu of the suit premises. He submitted that the learned trial Judge decreed the Suit. As against this, the appellate Court committed serious error in interfering with the well-reasoned order. He, therefore, submitted that Application requires consideration.

10. On the other hand, Mr. Jain invited my attention to paragraph 23 of the judgment rendered in Appeal No.31 of 2008. In paragraph 23, P.W.1 Ramani Naidu was shown affidavit (exhibit-7) sworn by deceased Shantabai and she admitted it as correct. She also identified signature of Shantabai on the said affidavit. Original affidavit and letter dated 21.06.1993 were produced in cross-examination of plaintiff's witness Ramani and were marked as exhibits-7 and 8 respectively. She admitted that these documents as correct and identified signature of deceased Shantabai. He further submitted that as defendant No.4 was residing in

the suit premises at the time of death of deceased Shantabai as her adopted son, rent receipts were transferred in his name. He, therefore, submitted that the appellate Court, after considering the evidence on record, held that defendant No.4 was a tenant of the suit premises as contemplated by Section 5(11)(c)(i) of the Act.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, it is not in dispute that Kanna Govind Naidu was the tenant. He died on 20.03.1989 leaving behind original plaintiff-Shantabai. Original plaintiff instituted Suit for declaration of tenancy rights. After the death of the original plaintiff, plaintiff Ramani Naidu is brought on record. Perusal of paragraph 18 of the appellate Court judgment shows that Advocate appearing for the parties requested the trial Court to read the cross-examination of P.W.1 Ramani recorded in R.A.D. Suit No.341 of 1997. P.W.1 admitted that defendant No.4 Jaywant Surve, his wife and children were residing in the suit premises. Rohit, son of Jaywant Surve was born in the suit premises in the year 1991. In her cross-examination, affidavit at exhibit-7 and letter dated 21.06.1993 at exhibit-8 were shown to her. She admitted those documents. She further admitted that the name of Jaywant Surve is included in the ration card at exhibit-2. She admitted that her uncle Kanna and her mother Ratnabai were residing jointly as joint family in rooms No.1 and 5-B. Defendant No.4 Surve was treated by them as son of deceased tenant Kanna. In paragraph 19, the appellate Court after referring the testimony of P.W.1 Ramani, observed that it is established that defendant No.4 Jaywant Surve, since his childhood, was residing along with deceased Kanna, his wife Shantabai and sister Ratnabai in rooms No.1 and 5B. Rooms No.1 and 5B were in joint occupation of deceased Kanna, his wife Shantabai and defendant No.4. Defendant

No.4 got married while residing in the suit premises and that, his wife and children were also staying in the suit premises. It was further established that deceased tenant Kanna, his wife Shantabai and Ratnabai treated defendant No.4 as their child. It was further noted in paragraph 24 that the rent receipts were transferred in the name of defendant No.4 Surve. The appellate Court, ultimately, in paragraph 30 recorded conclusion that evidence goes to establish that defendant No.4 was the tenant on the basis of surrender of tenancy on the part deceased Shantabai and rent receipts were issued in the name of defendant No.4. Plaintiffs, therefore, did not establish that they are the tenants of the suit premises. On the contrary, it has been established that defendant No.4 was the tenant. In view thereof, I do not find that the appellate Court committed any error in allowing Appeal No.31 of 2008. Plaintiffs were not in a position to show that the findings recorded by the appellate Court are perverse being based on no evidence on record and are contrary to the material on record. Plaintiffs were also not in a position to demonstrate that no reasonable / prudent person would have reached the conclusions arrived at by the appellate Court. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Applications fail and the same are dismissed.

(R. G. KETKAR, J.)

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