

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9800 OF 2016
WITH
WRIT PETITION NO.9837 OF 2016

Mr. Clarry Gasper Rodrigues & Ors.

.. Petitioners

-Versus-

Badruddin Nazir Ahmed Khan

..Respondent

Mr.Rajesh Singh for petitioners

Mr. H.P.Pandey for respondent

CORAM : R.G.KETKAR, J.

DATE : 22nd September 2016.

P.C.

1] Heard Mr. Rajesh Singh, learned Counsel for petitioners and Mr. H.P.Pandey, learned Counsel for respondents at length. Rule. At the request and by consent of the parties rule is made returnable forthwith and the petition is taken up for final hearing.

2] These petitions are directed against the judgement and orders dated 6th June 2016 below Exh.30 in R.A.E. & R. Suit No.1214/1852/2010 and dated 13th January 2016 below Exh.21 in R.A.E. & R. Suit No.1139/1754/13. By these orders, the learned trial Judge rejected the applications filed by the petitioners, hereinafter referred to as applicants,

for joining them as defendants in the suits instituted by the respondent , hereinafter referred to as plaintiff. As the issue involved is common in both the petitions, they are disposed of by this common order.

3] For appreciating the controversy raised in these two petitions, facts from Writ Petition No.9800 of 2016 are taken into consideration.

4] The plaintiff has instituted the suit against petitioner No.5 for recovery of possession of Gala Nos. 67 to 72 of the suit premises on two grounds; viz., (i) arrears of rent and (ii) non user as contemplated under section 15 and 16(1)(a) of the Maharashtra Rent Control Act, 1999 (for short Act). Petitioner No.5, hereinafter referred as defendant, filed written statement, inter alia, contending that there is no relationship of landlord and tenant, that the plaintiff is not the owner of the suit premises, therefore, the suit is not maintainable. In para 4 of the W.S. it was contended that one Ms. Cecilla Gasper Rodrigues and Ms. Dazy Paul Misquotta are the original owners of the suit property. These owners have executed the tenancy agreement dated 2nd February 1984 in favour of the defendant and his brother and also the rent receipts in respect thereof are issued.

5] In support of these petitions, Mr. Singh submitted that the

defendant has disputed the relationship of landlord and tenant between the plaintiff and defendant and has further contended that the applicants are the owners of the suit premises. They are the heirs of late Cecilla Gasper. They are the owners and landlords of the suit premises. The plaintiff has no right, title and interest in the suit premises. The applicants, therefore, filed application Exh.30 under Order I Rule 10 of C.P.C. for joining them as defendants. He submitted that in the record of rights, the names of the applicants are entered into. In fact, the plaintiff has instituted S.C.Suit No.981 of 2014 against the Ms. Daizy Gasper Rodrigues and Ms. Glory Gasper Rodrigues. He has invited my attention to the prayer (c) by which plaintiff herein sought perpetual injunction against these persons from interfering/ disturbing or issuing rent receipts in the name of defendants 1 and 2 therein or any other occupants. He submitted that no injunction is granted by the trial court in that suit. The plaintiff is relying upon the deed of conveyance executed by Daisy Rodrigues in his favour on 2nd February 1984. Though the deed of conveyance is purportedly executed on 2nd February 1984 the same is registered on 29th November 2011. Even the signatures thereon are forged. In fact the instrument itself is forged instrument and F.I.R. is also lodged in that behalf and investigation is in progress.

6] He further submitted that the learned trial Judge while rejecting the

application has relied upon a decision of the Supreme Court in the case of J.J.Lal Pvt. Ltd. and Ors. Vs. M.R.Murali and Anr., A.I.R. 2002 S.C. 1061.. He submitted that the learned trial Judge committed serious error in relying upon the said decision which is inapplicable to the facts and circumstances in the present case. It will seriously affect rights of applicants. They are either necessary or proper party and, therefore, the petitions require consideration.

7] On the other hand Mr. Pandey supported the impugned orders. He submitted that the suit is between the landlord and tenant. Having regard to the jurisdiction of the Small Causes Court under the Rent Act, the Court cannot decide the dispute, inter se, about the title of the suit property. He relied upon section 35 of the Act and submitted that the trial Judge rightly rejected the application as the applicants are neither necessary nor proper party.

8] I have considered the rival submissions. I have also perused the material on record. The applicants have filed the application inter alia on the ground that they are the heirs of Cecillia Gasper Rodrigues and are the landlords and owners of the suit premises. In other words, the applicants are setting up their title in a suit instituted by plaintiff against the defendants for eviction. The jurisdiction of Small Causes Court is

regulated by the provisions of the section 35 of the Act which lays down thus:-

“35. Nothing contained in sections 33 and 34 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises”.

Perusal of section 35 extracted above shows that nothing contained in sections 33 and 34, shall be deemed to bar a party to a suit or appeal mentioned therein in which a question of title to premises arises and is determined from suing in a competent court to establish his title to such premises. In other words, the finding recorded by the Court of Small Causes will not operate as res judicata and will not preclude the party to the suit from approaching the competent court for establishing its title. In view thereof, the Small Causes Court cannot be permitted to decide the dispute of title between the parties. In para 7 of the order, the learned Judge has also recorded that the Small Causes Court cannot decide any dispute about the title of the suit property. The decision in the suit is not likely to affect the right of the applicants. The applicants, therefore, do not appear necessary or proper party to the present suit.

9] Mr. Singh relied upon the extract of the Form No.6 wherein the

names of applicants are recorded as owners of the suit property as also written statement filed by the defendant wherein the defendant has denied the relationship of landlord and tenant and contended that Ms. Cecillia Gasper Rodrigues and Ms. Daizy Gasper Rodrigues are the owners of the suit property.

10] I do not find any merit in this submission. The trial court, among other issues will also decide whether relationship of landlord and tenant exists between the parties or not. Equally, I do not find any merit in the submission of Mr. Singh based on the deed of conveyance. The Small Causes Court cannot decide whether the deed of conveyance is forged or not. In view thereof, no case is made out for invoking powers under Article 227 of the Constitution of India. The petitions fail and dismissed accordingly. Rule is discharged with no order as to costs.

(R.G.KETKAR, J)