

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.955 OF 2012

- | | |
|-------------------------------------|----------------|
| 1. Vidyadhar Shankarrao Sarnaik |] |
| Age 61 years, |] |
| 2. Ratnakar Shankarrao Sarnaik |] |
| Age 56 years, |] |
| 3. Aparna Shankarrao Sarnaik |] |
| (now deceased) |] |
| 4. Shashikala Shankarrao Sarnaik |] |
| Age 51 years, |] |
| 5. Meena Vidyadhar Sarnaik |] |
| Age 49 years |] |
| All residing at "A" Ward, C. S. No. |] |
| 1413, near Mardani Khelacha |] |
| Akhada, Shivaji Peth, Kolhapur |].. Applicants |

Versus

- | | |
|-----------------------------------|----------------|
| Namdev Dhondiram Yadav |] |
| (Since deceased through his heir) |] |
| Arun Namdev Yadav, |] |
| aged 60 years, Occu: Agriculture, |] |
| residing at Undir, Tal. Panhala, |] |
| Dist. Kolhapur |].. Respondent |

Mr. S. S. Patwardhan, for the Applicants.

Mr. C. G. Patil, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 5th FEBRUARY 2016

ORAL JUDGMENT

1. Admit, with the consent of the Learned Counsel for the parties taken up for hearing forthwith.

2. The Revisionary Jurisdiction of this Court is invoked against the judgment and order dated 10.04.2012 passed by the Learned District Judge-3, Kolhapur, by which order the Regular Civil Appeal No.171 of 2008 filed by the Respondent came to be allowed and resultantly, the judgment and decree passed by the Trial Court in Regular Civil Suit No.948 of 2002 came to be set aside and the Defendants were directed to put the Plaintiff in possession of the suit property as described in paragraph 1 of the plaint. The Defendants were also restrained from disturbing the possession of the Plaintiff on such restoration.

3. The Petitioners herein are the original Defendants in Regular Civil Suit No.948 of 2002 filed by one Namdev Yadav who was the original Plaintiff. It seems that the suit was originally filed for permanent and mandatory injunction seeking to restrain the Defendants from interfering with the possession of the Plaintiff. However, it appears that during the pendency of the suit, the Plaintiff was dispossessed resulting in the plaint being amended and the relief of possession being sought by the Plaintiff. The Defendants filed their written statement as well as the additional

written statement in the suit. The parties proceeded to trial. Suffice it would be to state that the Trial Court on the basis of the material on record came to a conclusion that the relief sought by the Plaintiff could not be granted and accordingly by the judgment and order dated 25.04.2008 dismissed the suit.

4. The Plaintiff aggrieved by the dismissal of the suit carried the matter in appeal by way of Regular Civil Appeal No.171 of 2008. It appears that during the pendency of the Appeal, the original Plaintiff Namdev Yadav expired on 31.01.2010. Pursuant to which the Respondent herein i.e. Arun Namdev Yadav who is the son of the original Plaintiff filed an application for bringing himself on record. The said application was moved on 22.04.2010 and it seems was allowed on the same day. The Respondent Arun Namdev Yadav accordingly came to be joined as an Appellant to the Appeal. The Lower Appellate Court thereafter proceeded to hear the Appeal and by judgment and order dated 10.04.2012 has allowed the Appeal and set aside the decree of dismissal passed by the Trial Court. A reading of the impugned judgment and order of the Lower Appellate Court discloses that the Lower Appellate Court has adjudicated the Appeal on the basis of the facts relating to the original Plaintiff Namdev Yadav and on such consideration has come to a conclusion that the original Plaintiff Namdev Yadav was in possession of the suit property

and was wrongly dispossessed by the Defendant and has accordingly decreed the suit filed by the Plaintiff. Significantly, though the said Namdev Yadav had expired during the pendency of the Appeal and the present Respondent Arun Namdev Yadav has come on record, the Lower Appellate Court has not considered the matter from the stand point of whether the Respondent herein i.e. Arun Namdev Yadav would be entitled to the decree of possession. In so far as the said aspect is concerned, the same is governed by Section 7(15)(d) of the Maharashtra Rent Control Act, 1999, which for the sake of ready reference is reproduced hereinunder :-

“Section 7(15)(d)- “tenant” means any person by whom or on whose account rent is payable for any premises and includes,-

(a)

(b)

(c)

(d) in relation to any premises, when, the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court.”

5. By the said clause (d), the categories of persons mentioned therein have been taken within the sweep of the definition of tenant as appearing in Section 7(15) of the said Act. The first category is the category which is covered by clause (d)(i) and (ii) and the second category is the category of any heir of the deceased tenant as may be decided, in the absence of agreement, by the Court. Hence, though the application filed by the Respondent Arun Namdev Yadav was allowed by the Lower Appellate Court and though the facts relating to the original Plaintiff Namdev Yadav were material, it was also necessary for the Lower Appellate Court to adjudicate the Appeal, in so far as the entitlement of the decree of possession is concerned, on the touchstone of the said provision i.e. Section 7(15)(d) aspect, this was in view of the fact that original Plaintiff Namdev Yadav had expired during the pendency of the Appeal. Though the Learned Counsel appearing on behalf of the Respondent Mr. C. G. Patil sought to make a valiant attempt to sustain the order even on the touchstone of Section 7(15)(d) i.e. second part, since that is not the consideration on the basis of which the decree has been passed by the Lower Appellate Court, the said contention cannot be entertained for the first time by this Court in its Revisionary Jurisdiction.

Since the matter has not been considered on the touchstone of the said provision i.e. Section 7(15)(d) of the said Act. In my view, it would be just and proper to set aside the impugned judgment and order dated 10.04.2012 passed by the Lower Appellate Court and relegate the matter back to the Lower Appellate Court for a de-novo consideration of the Appeal. Hence, the following directions :-

I) The impugned judgment and order dated 10.04.2012 passed by the Lower Appellate Court is quashed and set aside. The matter is relegated back to the Lower Appellate Court for a de-novo consideration of the Appeal.

II) The Lower Appellate Court would consider the Appeal on the touchstone of Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 and rule upon whether the Respondent herein who is the heir of the original Plaintiff is entitled to the decree of possession.

III) The Respondent herein i.e. Arun Namdev Yadav would be entitled to file an affidavit in support of his claim that he is entitled to the decree of possession. The Applicants herein would be entitled to counter such an affidavit.

IV) Needless to state that the contention of the parties are kept open for being urged before the Lower Appellate Court.

V) The parties to appear before the Lower Appellate Court on 22.02.2016.

VI) The Lower Appellate Court to thereafter decide the Appeal latest by 31.05.2016.

VII) The Civil Revision Application is allowed to the aforesaid extent with parties to bear their respective costs.

[R.M. SAVANT, J]