

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 9951 OF 2016

Mr. Romeo Tresa Dominic Vasavokar	...Petitioner
<i>Versus</i>	
Smt. Nafisajakiuddin alias Zakiuddin Golwala And Ors.	..Respondents

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Mr.Vineet X. D'Silva, Advocate for the Petitioner.
Mr. I.Z. Merchant, Advocate for Respondents No.1 to 3.

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CORAM : R. G. KETKAR, J.
DATE : 19th OCTOBER, 2016

P.C.

1. Heard Mr.Vineet D'Silva, learned Counsel for the petitioner and Mr.Merchant, learned Counsel for respondents No.1 to 3, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant' has challenged the judgment and order dated 22.3.2016 passed by the learned Judge, presiding over Court room No.35 of the Court of Small Causes Court at Mumbai (Bandra Branch) below Exhibit-21 in R.A.E. & R. Suit No.312/2014 as also the judgment and order dated 19.7.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in Revision Application No.61/2016. By order dated 22.3.2016, the learned trial Judge allowed the application made by the respondents, hereinafter referred to as the 'plaintiffs' requesting the

Court to direct the defendant to give inspection of the suit premises along with his Architect Mr.Kaniyalal Vakharia with permission to take photographs, if required. Appellate Court rejected the revision application on the ground of maintainability.

3. In support of this Petition, Mr. D'silva submitted that earlier for identical reliefs the plaintiffs filed application Exhibit-11. By order dated 8.9.2015, the learned trial Judge rejected the prayer for appointment of Architect as a Court Commissioner. Aggrieved by this decision, the plaintiffs have preferred appeal and the same is pending before Appellate Court. However, the appeal does not challenge the rejection of prayer made by the plaintiffs for appointment of Architect as a Court Commissioner. In other words, the order dated 8.9.2015 insofar as prayer for appointment of Architect as a Court Commissioner has attained finality. He submitted that the plaintiffs thereafter filed present application Exhibit-21. He invited my attention to paragraph-3 of the affidavit of plaintiff No.2. In paragraph-3, reference was made to the letter dated 29.4.2014 addressed by the plaintiffs Advocate to the defendant seeking inspection of the suit premises. The reference was also made to the assertions made in the plaint as regards the nature of additions and alterations and structural changes carried out in the suit premises by the defendant. He submitted that even in the application at

Exhibit-11, the plaintiffs alleged about carrying out construction by the defendant and for that purpose prayed for appointment of the Court Commissioner. The learned trial Judge rejected the application on the ground that the Commissioner cannot be appointed for collecting evidence. Application Exhibit-21 is, therefore, hit by principles of *resjudicata*. The Courts below were not justified in allowing the application.

4. Mr. D'silva further submitted that even otherwise the plaintiffs are not the landlords of the suit premises and, therefore, the Courts below committed error in allowing the application.

5. On the other hand, Mr. Merchant supported the impugned orders. He submitted that application Exhibit-11 was made for injunction restraining the defendant (1) from creating third party interest in respect of the suit premises, (2) from carrying out work of additions, alterations and structural changes in the suit premises and (3) for appointment of Court Commissioner. In paragraph-10, the learned trial Judge *prima facie* observed that the plaintiffs have shown their ownership. In paragraph-13, the learned trial Judge dealt with the prayer for appointment of Court Commissioner for inspection of the suit premises on the ground that construction is being carried out in the suit property. The learned trial Judge in that context observed

that the plaintiffs have to prove additions and alterations carried out by the defendant on the suit property and Court Commissioner cannot be appointed for collecting the evidence. Mr.Merchant submitted that the application Exhibit-21 cannot be said to be hit by principles of *resjudicata* . He relied upon Section 28 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') which recognizes the right of the landlord to take inspection of the suit premises. In support of this submission, he relied upon following decisions :

- [I] ***Empeegee Portfolio Services Pvt. Ltd. v. Mrs. Sharada Navinchandra Shah, 2009(1) ALL MR 516***
- [II] ***Kamlabai Laxman Mutraj v. Bherumal Verimal Haran, 2009(2) Mh.L.J. 213.***
- [III] ***Suresh Manoharlal Jumanı & Anr. v. Aasia Management & Consultancy Pvt. Ltd., 2013(6) ALL MR 117.***

6. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Mr.D'silva submitted that the plaintiffs are not the owners of the suit property. Perusal of trial Court's order dated 8.9.2015 below Exhibit-11 and in particular paragraph-10 shows that the plaintiffs have produced the rent receipts and also property card. The learned trial Judge held that *prima facie* the plaintiffs have

shown their ownership. Perusal of the order dated 8.9.2015 shows that the application for appointment of the Court Commissioner was rejected by the learned trial Judge mainly on the ground that the plaintiffs came with the case that construction is being carried out on another property and it is for the plaintiffs to prove the additions and alterations carried out by the defendant in the suit property and, therefore, it is necessary to appoint Court Commissioner. It is in that context, the learned trial Judge observed that the Commissioner cannot be appointed for collecting evidence.

7. In the present case, the plaintiffs have issued notice dated 29.4.2014 through Advocate to the defendant seeking inspection of the suit premises. Section 28 of the Act reads thus :

“28. Inspection of premises.-- The landlord shall be entitled to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier.”

8. In the case of **Suresh Juman**i (supra) the learned Single Judge considered the decisions in **Empeegee Portfolio** (supra) and **Kamlabai** (supra). In paragraph-8 it was observed thus :

“8. Section 28 of the Act of 1999 gives a

right to the landlord to inspect the premises let or given on licence at a reasonable time after giving prior notice to the defendant, licensee or occupier. Section 28 in terms recognises the inherent right of the landlord to inspect the premises which he has let or given on licence at all reasonable times. The only qualification is a prior notice to the tenant, licensee or occupier by the landlord. The prima donna question would be the extent of this right of inspection.”

9. In paragraph-18, the learned Single Judge referred to the fact that the plaintiffs had given notice to the defendant for inspection of the suit premises along with Architect and Surveyor. It was observed that the learned trial Judge granted leave and that order cannot be construed of having appointed Court Commissioner.

10. In view thereof, I do not find any substance in the submission of Mr.D'silva that the application Exhibit-21 is hit by principles of *resjudicata* . Section 28 in fact recognizes the right of the landlord to take inspection of the suit premises. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)