

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

CIVIL REVISION APPLICATION NO. 916 OF 2014

Smt. Ajab Nasir Kanthawala & Ors. ... Applicant.
V/s.
Abdulla Ismail Kanthawala & Ors. ... Respondent

Mr. Javed Shaikh for the Applicant.
Mr. Anirudha Sathe i/b Ms. Z. Kanthawala for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 16/03/2016**

P.C.:

. Heard learned Counsel for the parties.

2 This Civil Revision Application is preferred by defendants challenging the concurrent findings of the facts recorded by the Trial Court as well as Appellate Court directing the applicant to hand over the vacant and peaceful possession of the suit premises i.e. portion marked '2' & '3' in annexure Exh.A to the plaint i.e. 10-A, Allana Cottage, Opp. Agripada Police Station, Dr. A.R. Nair Road, Mumbai – 400 011 (hereinafter will be referred as 'suit premises').

3 For the sake of convenience, the nomenclature of the parties will be referred as described in plaint i.e. Applicants as Defendants and Respondents as Plaintiffs.

4 A few facts of the matter are as under:

a) The Plaintiff filed L.E. & C Suit No. 190/233 of 2008 for

vacant and peaceful possession of the suit premises on the ground that defendants were gratuitous licensee in respect of suit premises and was terminated. In that suit, the defendants filed their written statement dated 03.10.2008. In written statement, the defendants raised plea that they were co-tenants in respect of suit premises and hence, they have rights to occupy the same. Paragraph 5 of the written statement, reads thus:

“5) With reference to para-2 of the plaint, these defendants say that the original defendant no.1 occupied 1/4th part of the portion of the premises and defendant no.2 1/4th part of the entire premises. These defendants however, state that original defendant no.1 and defendant no.2 occupy their respective portion as co-tenants and not as alleged licensees as alleged. These defendants deny that they failed and neglected to vacate their portion inspite of several requests made by the original plaintiff as alleged. These defendants say that the original defendant no.1 and defendant no.2 being in occupation of their respective premises as co-tenants there was no question of their failure to vacate their respective portions as alleged.”

b) Considering the evidence on record, the Trial Court framed following issues:

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Whether this Court has jurisdiction to entertain and try this suit?	Yes.
2)	Whether the suit is maintainable as framed?	Yes.
3)	Whether the plaintiffs prove that the defendants are the gratuitous licensee in respect of the suit premises?	Yes.
4)	Whether defendants prove that they contributed their share towards the rent of the	No.

	entire premises?	
5)	Whether the defendants prove that they are co-tenants in respect of the suit premises?	No.
6)	Whether the defendants prove that they are protected under the Maharashtra Rent Control Act?	No.
7)	Whether plaintiffs are entitled for the possession of the suit premises?	Yes.
8)	What Order?	Suit is decreed.

c) After hearing both the sides, the Trial Court by Judgment and Decree dated 20.07.2012 held that plaintiffs made out the case for eviction of defendants from the suit premises. Hence, Trial Court directed the defendants to vacate and handover the possession of the suit premises to the plaintiffs within two months from the date of decree.

d) Being aggrieved by the Judgment and Decree passed by the Trial Court, the defendants preferred the Appeal before the Appellate Bench and Small Causes Court at Mumbai. The Appellate Court framed following points for determination.

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the learned trial court has committed an error in holding that there is relationship of licensor and licensee (gratuitous licensee) between the parties ?	No.
2)	Whether the learned trial Court has	No.

	committed an error in holding that the defendants failed to prove that they are the co-tenants in respect of the suit premises ?	
3)	Whether the learned trial court has committed an error in holding that the suit is maintainable and the Court has jurisdiction to try and entertain the suit ?	No.
4)	Whether the learned trial Court has committed an error in holding that the plaintiffs are entitled for possession in respect of the suit premises ?	No.
5)	Whether the Judgment and decree of the learned trial Court are according to the facts and law ?	Yes.
6)	What order ?	As per final order.

e) Considering the evidence on record, the Appellate Court categorically held that plaintiffs made out case for eviction. The appellate Court also held that the defendants failed to prove that they were co-tenants of the suit premises along with the plaintiffs. Those findings were recorded by the Appellate Court in paragraph 13 of the Judgment.

f) Being aggrieved by the Judgment and Decree passed by the Appellate Court, the defendants tenants preferred the present Civil Revision Application.

5 The learned Counsel Mr. Javed Shaikh appearing on behalf of defendants submits that both the courts below erred in coming to the conclusion that defendants failed to prove their exclusive possession over the suit premises. He submits that originally the rent receipt was

in the name of their grandfather. After the death of grandfather, the rent receipt was transferred in the name of original plaintiff Ismail Ibrahim Kanthawala being a elder son of the family. He submits that father of the defendants as well as original plaintiffs were occupying the suit premises independently. He submits that in the entire pleading the plaintiffs failed to prove, since when he has allowed the defendants to use the suit premises as gratuitous licensee. He submits that even in the pleading plaintiffs failed to disclose the date from which the gratuitous licence stands terminated. Not only that, the plaintiff has not placed on record any notice/document to show that they terminated licence granted in favour of the defendants to occupy the suit premises.

6 The learned counsel for the defendants submits that both the courts below failed to consider the fact that defendants were in occupation of the suit premises having a separate electricity meter. He further submits that since 1964, the defendants were in possession of the suit premises. He further submits that even the original landlord filed the suit against the plaintiffs as well as defendants on the ground that plaintiff subletted the suit premises to the defendants. He submits that all these facts are not considered by the Courts below. Hence, defendants have good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned Judgment and Decree dated 20.07.2012 passed by the Trial Court as well as dated 15.07.2014 passed by the Appellate Bench of the Small Causes Court. He submits that if Civil Revision Application is not allowed, irreparable loss and injury will be caused to

the defendants.

7 On the other hand, the learned Counsel Mr. Sathe, appearing on behalf of Plaintiffs vehemently opposed the present Civil Revision Application. He submits that there is concurrent findings of facts recorded by both the courts below. Hence, there is no question of entertaining the present Civil Revision Application, as the defendants failed to point out any irregularity committed by the Courts below. He submits that in the present proceeding, the rent receipt was in the name of original plaintiffs since beginning. He submits that original plaintiffs allowed the defendants' father being a brother to occupy the portion of the suit premises without charging any compensation and/or rent.

8 The learned counsel for the Plaintiffs further submits that defendants' failed to place on record any documentary evidence to show that the rent receipt was in the name of their grandfather. He submits that the defendants in their written statement pleaded the case that they were co-tenants of the suit premises. He further submits that both the courts after perusing the evidence on record concurrently held that defendants failed to prove their case about the co-tenancy. He submits that Judgment and Decree passed by both the courts below is according to law. Hence, there is no substance in the present Civil Revision Application and same to be dismissed with costs.

9 I heard both the sides at length. I have gone through the copy of

plaint, written statement, evidence of both the parties and other documents.

10 The learned Counsel for the defendants in support of his contentions relied on following judgments.

- 1 *Balvantsingji Anand Vs. Bhagwantrao Ganpatrao Deshmukh*, reported in AIR 1980 Bom. 33.
- 2 *Shri Vishnu Tayappa Kamble Vs. Abdul Rashid Abdul Hakim Ansari*, reported in 2005(4) Mh.L.J. 595.
- 3 *Allahabad Bank Vs. Saday Chand Mahatab & Ors*, reported in (1999) 2 CALLT 211 HC.
- 4 *Peramanand Gulabchand And Co., Vs. Mooligi Visanji*, reported in AIR 1990 Ker 190.
- 5 *Ram Sarup Gupta (Dead) by LRS Vs. Bishun Narain Inter College And Others*, reported in (1987) 2 Supreme Court Cases 555.
- 6 *Neki S/o Bakhatawar Vs. Satnarain and Others*, reported in AIR 1997 SC 1334.

11 It is to be noted that in the present proceeding, the defendants filed their written statement and claimed co-tenancy in respect of suit premises. But, he failed to place on record a single documents to justify his claim. Because of relationship between the original Plaintiff/tenant and defendants being a brother, original plaintiff allowed defendants to occupy part of the suit premises as gratuitous licensee. The record shows that the tenancy stand in the name of plaintiff only. These facts were considered by both the courts below

minutely. The defendants has not brought on record any documents to point out the judgments passed by both the courts below are perverse and contrary to the law. It is to be noted that if there is concurrent findings of facts recorded by both the courts below then High Court normally should not interfere in the same. The reference can be made to that effect of following authorities.

a) The Apex Court in the matter of ***Sumatiben Maganlal Manani V/s. Uttamchand Kashiprasad Shah & Ors. reported in 2011(6) Mh. L. J. 1***, held that High Court in exercising of its revisionary jurisdiction committed mistake in interfering with and setting aside the findings of facts properly arrived by the courts below.

b) The Apex court in the matter of ***Sunilkumar & Ors. V/s. Anilkumar reported in 2008(9) SCC 241*** held that High Court should not interfere the concurrent findings of fact recorded by the court below, if no perversity or infirmity pointed out in the order.

c) The Apex Court in the matter of ***Hiraman Vyankati Churad V/s. Rajesh Parasram Shahu reported in 2011(3) Bom. C.R. 367*** held that Concurrent findings of facts of courts below cannot be interfered with, when both the courts below have appreciated pleading and evidence.

15 The authorities cited by the defendants as stated hereinabove are not applicable in the facts and circumstances of the present case. In

those cases, the court held that if the occupants proves his case as a tenant, then he is entitled for relief. In some of the authorities, Court held that the plaintiffs have to plead when he terminated licence of the tenant and how. That is not issue in the present proceeding. In the proceeding in hand, the defendants claimed co-tenancy with the plaintiff and which he failed to point out/prove.

16 In this background, considering the reasoning given by the courts below read with the provisions of law and specially the scheme of Bombay Rent Act, I am of the view that there is no case made out by the applicants defendants to interfere with the concurrent findings of facts given by the courts below.

17 Hence, Civil Revision Application stands rejected.

(K.K.TATED, J.)