

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.509 OF 2016

Yekkal Parvati Pereyya through POA
Laxminarayan Peraiah Yekkali ... Applicant
Vs.
Alka Kashinath Bonge and others ... Respondents

Mr. N. P. Wagle for Applicant.
Ms Kavita A. Shah for Respondents No.1 to 5.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 13, 2016

P.C. :

Heard Mr. Wagle, learned Counsel for applicant and Ms Shah, learned Counsel for respondents at length. Rule. Ms Shah waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant has challenged the judgment and decree dated 04.03.2014 passed by the Appellate Bench of the Court of Small Causes at Bombay in Appeal No.238 of 2002 as also the judgment and order dated 14.07.2016 passed by the Appellate Bench of the Small Causes Court in Review Petition No.37 of 2014. By order dated 04.03.2014, the Appellate Court allowed the appeal and quashed and set aside the judgment and decree passed by the trial Court. The Appellate Court decreed the Suit instituted by respondents-plaintiffs and directed the applicant-defendant to hand over vacant and peaceful possession of room No.1 admeasuring about 10'x10' situate in House No.15, Kamathipura, 8th Lane, Mumbai 400 008 (for short 'suit premises') to the plaintiffs. By order dated 14.07.2016, the Appellate

Court dismissed the Review Petition preferred by the defendant.

3. In support of this Application, Mr. Wagle has invited my attention to the judgment and decree dated 22.02.2006 passed by the learned trial Judge in R.A.D. Suits No.799 of 1985 and 800 of 1985 instituted by Dattatray Shankar Shrigaonkar and Ramlingam Ballaya Injapuri respectively and in particular paragraph 14 thereof. He submitted that the learned trial Judge, while dismissing the Suits, categorically recorded a finding that the defendant (plaintiff herein) is in possession of rooms No.6 and 8 situate on the third floor of the suit building. He also invited my attention to the judgment and decree dated 15.10.2008 passed by the Appellate Bench of the Small Causes Court in Appeal No.301 of 2006 filed by Dattatray Shankar Shirgaonkar, and in particular paragraph 11 to contend that plaintiff in the present case is in possession of rooms No.6 and 8. Mr. Wagle submitted that as far as Appeal No.300 of 2016 filed by Ramalingam Ballaya Injapuri is concerned, he filed purshis dated 26.08.2008 recording therein that he withdraws the appeal and gives up the claim of room No.6, third floor, which is in exclusive use, occupation and possession of respondent-defendant, who is plaintiff in the present case.

4. Mr. Wagle submitted that in examination-in-chief of the plaintiff's witness P.W.1 conducted on 20.07.1999, he deposed that tenants on the third floor namely, Dayalal Jain, Vardaji Purohit and Ukaji Purohit were inducted prior to 20 years. He also invited my attention to the cross-examination of the plaintiff conducted on 16.08.1999 wherein plaintiff's witness stated that there are three rooms situate on the third floor and the tenant of the third floor premises is one Mr. Shah of all the three rooms. In cross-examination conducted on 08.12.1999, P.W.1 stated that Vardaji, Tukaji and Dayalal were not tenants of the third floor of the suit

building.

5. Mr. Wagle invited my attention to paragraphs 35 and 56 of the Appellate Court judgment and submitted that the Appellate Court has not considered availability or otherwise of rooms No.6 and 8 by the plaintiff and consequently whether the need set up by the plaintiff survives or is met in view of acquisition of rooms No.6 and 8.

6. On the other hand, Ms Shah has invited my attention to the written statement filed by the defendant and in particular paragraph 9 wherein defendant admitted that the three rooms on the third floor are in occupation of Dayalal Jain, Vardaji Purohit and Ukaji Purohit. Ms Shah, therefore, submitted that defendant himself admitted occupation of these persons on the third floor, and therefore, it cannot be said that plaintiff is in possession of rooms No.6 and 8, which are admittedly situate on the third floor.

7. During the course of hearing, I indicated to Ms Shah that having regard to the fact that the Appellate Court did not record any finding as regards availability of rooms No.6 and 8 more so when the trial Court has dismissed the Suit, this Court is inclined to admit the matter. Ms Shah states that respondent No.1 is present in the Court. She is the Constituted Attorney of respondents No.2 to 5. She has tendered photocopy of PAN Card, which is taken on record and marked 'X' for identification. Upon taking instructions from respondent No.1, Ms Shah states that by consent of the respondents, the impugned order may be set aside and the appeal may be directed to be disposed of in a time bound manner. Learned Counsel for the parties state that the parties will appear before the Appellate Court on 24.10.2016.

8. In view thereof, by consent of the parties, Civil Revision application is disposed of in the following terms:

- a. Impugned judgments and orders dated 04.03.2014 and 14.07.2016 are quashed and set aside and the Appeal is restored to the file of the Appellate Court;
- b. Parties agree that they will appear before the Appellate Court on 24.10.2016 at 11.00 a.m. and for that purpose, no fresh notice be issued to them;
- c. The Appellate Court will consider the contentions noted herein and other contentions that may be available to the parties;
- d. The Appellate Court is requested to decide the Appeal as expeditiously as possible and preferably within 3 months from the date of appearance of the parties;
- e. All contentions of the parties on merits are expressly kept open;
- f. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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