

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Revision Application NO. 892 OF 2012

Shri. Ignatius S. Jadhav ...Applicant

Versus

Smt. Asha Dattatraya Shinde ...Respondent

WITH
CIVIL APPLICATION NO.663 OF 2014
IN
CIVIL REVISION APPLICATION NO. 892 OF 2012

....

Mr.P.D. Dalvi, Advocate for the Applicant.

Mr. Jayant Gaikwad, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 23rd June, 2016

P.C.

1. Heard Mr. P.D. Dalvi, learned Counsel for the applicant and Mr. Jayant Gaikwad, learned Counsel for the respondent, at length.

2. By this application under section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the judgment and decree dated 4.5.2012 passed by the learned Ad-hoc District Judge-1, Kalyan in Civil Appeal No.96/2004. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as the 'plaintiff', and quashed and set aside the judgment and

decree dated 27.9.2004 passed by the learned Jt. Civil Judge, Junior Division, Kalyan in Regular Civil Suit No.477/2000. The learned District Judge decreed the suit and directed the defendant to deliver vacant possession of block No.1 on the 3rd floor of Ganesh Shopping Centre, Kalyan (for short, 'suit premises') to the plaintiff within six months from the date of decree. The defendant is also directed to pay an amount of Rs.12,650/- to the plaintiff towards the rent by way of compensation.

3. The plaintiff instituted the suit against the defendant *inter alia* claiming possession of the suit premises on the ground of bonafide and reasonable requirement under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The plaintiff came with the case that her husband is serving in railways at Kalyan. He comes to Kalyan from Igatpuri. The plaintiff is residing with her children at Igatpuri. As her husband is required to come from Kalyan to Igatpuri she requires the suit premises situate at Kalyan reasonably and bonafide. She has no other premises at Kalyan.

4. The defendant contested the suit on the ground that the plaintiff is neither a landlord nor owner of the suit premises.

The defendant contended that the plaintiff did not implead other legal heirs of original owner Namdev Sakharam Kalgude in the suit. The suit is, therefore, bad in law for non-joinder of necessary party. Though he is ready and willing to pay the rent, the plaintiff refused to accept the rent from him. He is, therefore, not a willful defaulter from August, 1996 to 8.6.1998. The defendant also denied the requirement set up by the plaintiff and contended that he has no other premises and greater hardship will be caused to him in the event of passing of the eviction decree. He further contended that the agreement dated 7.5.1993 which was executed between the parties is an unregistered instrument as required under Section 107 of the Transfer of Property Act, 1882 (for short, 'T.P. Act') and is, therefore, not admissible.

5. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The learned trial Judge held that the plaintiff is the owner of the suit premises and that she had given the suit premises on rent for five years vide agreement dated 7.5.1993. The learned trial Judge, however, held that the plaintiff has not established that

she requires the suit premises reasonably and bonafide and further held that greater hardship would be caused to the defendant in the event of passing of the eviction decree. The learned trial Judge dismissed the suit.

6. Aggrieved by this decision, the plaintiff preferred appeal which is allowed by the learned District Judge. It is against this decision, the original defendant has instituted this application under Section 115 of C.P.C..

7. In support of this application, Mr. Dalvi submitted that in paragraph-17, the learned trial Judge held that the Court of Civil Judge, Junior Division, Kalyan has no jurisdiction to entertain and try the suit. The learned trial Judge held that the agreement dated 7.5.1993 is not a tenancy agreement, but, by that agreement the defendant was inducted as a licensee. The relationship between the parties is, therefore, licensor and licensee. In view thereof, provisions of Section 24 of the Act are applicable. The Court of Civil Judge, Junior Division, Kalyan, therefore, has no jurisdiction to entertain and try the suit. The learned trial Judge, therefore, rightly dismissed the suit.

8. Mr. Dalvi further submitted that even the learned District Judge in paragraph-12 dealt with the issue of jurisdiction. The learned District Judge held that Section 40 of the Act provides for the manner of appointment of the competent authority. Section 40(2)(b) of the Act lays down that a person to be appointed as Competent Authority shall be one who is holding or has held a post of a Civil Judge, Junior Division. The learned District Judge therefore held that in view of Section 40 of the Act, the Competent Authority is the Civil Judge, Junior Division who is vested with the power of Rent Court and is empowered to entertain the suit filed under Rent Control Act. The Court of Civil Judge, Junior Division will, therefore, have jurisdiction. Mr. Dalvi submitted that the approach of the learned District Judge is perverse and erroneous. The learned District Judge ought to have held that as the agreement of 7.5.1993 is a leave and licence agreement, the plaintiff has to invoke provisions of Section 24 of the Act by filing proceedings before the Competent Authority. Merely because one of the requirements for appointment of the Competent Authority is that a person who has held or is holding the post of a Civil Judge, Junior Division, it will not confer

jurisdiction on the Civil Court to entertain the suit. He, therefore, submitted that the application requires consideration.

9. On the other hand, Mr.Gaikwad supported the impugned order. He invited my attention to paragraph-3 of the plaint wherein the plaintiff specifically asserted that the suit premises was given to the defendant as a tenant for a specific period of five years commencing from 7.5.1993 and ending on 6.5.1998. In paragraph-4 of the written statement, the defendant admitted that Namdeo s. Kalgude is the landlord who died on 22.7.1996 and left behind two brothers and two sisters. He further admitted that the plaintiff had applied for heirship certificate by filing Misc. Application No.372/1996 and that order granting her heirship certificate was passed on 3.4.2000. She was granted heirship certificate on 18.4.2000. He submitted that in paragraph-5, the defendant admitted that under agreement dated 7.5.1993 and supplementary agreement dated 17.11.1993, the defendant was inducted as a tenant for five years. He, therefore, submitted that the learned trial Judge was not justified in holding that the relationship between the parties is that of licensor and licensee. And, therefore, the plaintiff has

to invoke Section 24 of the Act and the Civil Court has no jurisdiction.

10. As far as order passed by the learned District Judge is concerned, he submitted that the findings recorded in paragraphs-12 and 13 were wholly uncalled for once there is no dispute between the plaintiff and the defendant about their relationship. Undisputedly the Court of Civil Judge, Junior Division is a Rent Court and, therefore, the Court of Civil Judge, Junior Division is empowered to entertain and try the suits between landlord and tenant. He, therefore, submitted that as the Appellate Court has accepted the case that the plaintiff requires the suit premises reasonably and bonafide, this is not a fit case for invoking powers under Section 115 of C.P.C..

11. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

12. Perusal of issues and in particular issues No.1 and 2 shows that the learned trial Judge held that the plaintiff proved that she is owner of the suit premises and that the plaintiff

further proved that the suit premises were given on rent for five years vide agreement dated 7.5.1993. The learned trial Judge, however, thereafter proceeded to discuss issue No.4 in paragraphs-16 to 18 and came to the conclusion that the relationship between the parties is that of licensor and licensee. In my opinion the said finding, to say the least, is perverse. The learned trial Judge failed to consider the pleadings of the parties as noted earlier. Even if the agreement dated 7.5.1993 is not a registered agreement as contemplated under Section 107 of T.P. Act in that event it will be a monthly tenancy. In other words, the relationship between the parties is essentially of a landlord and tenant. In paragraph-5 of written statement, the defendant admitted that he is a tenant. The entire approach of the learned trial Judge in deciding the suit was perverse.

13. The issue of bonafide requirement was considered by the learned trial Judge from paragraphs-12 and 13. In fact in paragraph-13, the learned trial Judge noted that the plaintiff's husband is serving with the Central Railway Administration at Kalyan. He is attending his duties from Igatpuri. He has no premises for residence at Kalyan. The learned trial Judge,

however, proceeded to deal with the case of the plaintiff that the landlord of the plaintiff's husband has issued notice to vacate the premises at Igatpuri, but, no eviction suit is filed. It, therefore, cannot be held that the plaintiff is in bonafide requirement of the suit premises for her residence at Kalyan. Even this approach of the learned trial Judge, to say the least, is perverse. Whether the landlord of the premises situate at Igatpuri has instituted a suit for eviction or not was wholly irrelevant once it is accepted that the plaintiff's husband was serving at Kalyan and was attending his duties from Igatpuri. It is also relevant to note that the plaintiff has no premises at Kalyan.

14. As far as the District Court is concerned, this aspect is considered from paragraphs-7 to 10. In paragraph-10, the appellate Court accepted the requirement set up by the plaintiff that her husband is coming to Kalyan from Igatpuri and that she has no other premises at Kalyan for residence.

15. As far as the comparative hardship is concerned, in paragraph-11, the learned District Judge, after considering the evidence on record, held that no evidence was adduced by the

defendant to support his contention that he has searched alternate premises after receipt of notice. After considering the evidence on record, I do not find that the learned District Judge has committed any error in passing the decree of eviction although findings recorded in paragraphs-12 and 13 were uncalled for in view of admitted relationship of parties. The defendant was not in a position to demonstrate that the findings recorded by the District Court are perverse being based on no evidence or that they are contrary to evidence on record. Defendant was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the District Court. Hence no case for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs. In view of dismissal of C.R.A., Civil Application No.663/2014 for production of documents filed by the plaintiff does not survive and the same is disposed of.

16. At this stage, Mr. Dalvi orally applies for stay of this order for a period of eight weeks from today. He further states

that the applicant and all adult family members residing with him in the suit premises are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondent opposes said prayer.

17. Having regard to the fact that applicant desires to challenge this order before the Apex Court, in my opinion, ends of justice would be served by staying operation of this order for a period of eight weeks from today subject to the applicant and all adult members residing with him giving usual undertaking to this Court within two weeks from today incorporating therein: (i) that they are in actual possession of the suit premises and nobody else is in possession; (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises; (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises; (iv) that they will pay the arrears of rent if any within two weeks from today to the plaintiff; and (v) that in case the applicant is unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

18. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of eight weeks from today, subject to the applicant filing undertaking in the aforesaid terms within two weeks from today with copy in advance to the other side. In case the applicant does not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)