

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 51/2016

Kum. Sudha Yeshwant Jadhav & Ors.	... Applicants
V/s.	
Rajendra Laxman Pol	... Respondent

Mr. Chetan G. Patil for the Applicants
Mr. Bhushan Walimbe for the Respondent.

CORAM: K.K. TATED, J.
DATED : APRIL 27, 2016

PC. :

1. Heard the learned counsel for the parties. By this Civil Revision Application, the petitioner original defendant Nos.2 to 4 challenge the concurrent findings of fact recorded by both the courts below.

2. In the present proceedings the respondent Nos.1 to 3 original plaintiff filed Regular Civil Suit No.67/2011 in the court of Civil Judge, Junior Division, Kolhapur for vacant and peaceful possession of the suit premises i.e. a room, admeasuring 10' x 10' situated at revision survey No.632 out of plot No.M-7, new number 132-A, Kolhapur (hereinafter referred to as suit premises) on the ground of arrears of rent, *bona fide* requirement etc. The trial court, by judgment and decree dated 10.03.2014 held that the plaintiff has made out a case for eviction decree on the ground of *bona fide* requirement and arrears of rent.

3. Said decree was challenged by defendant Nos.2 to 4 before the District Judge, Kolhapur vide Regular Civil Appeal No.124/2014. The

appellate court also held that the plaintiff proved the ownership of the suit property and is entitled to decree of eviction on the ground of arrears of rent as well as *bona fide* requirement. Hence, defendant Nos.2 to 4 made the Civil Revision Application.

4. The learned counsel for the defendant Nos.2 to 4 submits that both the courts below erred in coming to the conclusion that the plaintiffs proved that they are landlord of the suit premises. He submits that originally, the suit premises was belonging to one Champabai Dattatray Pol. She was a member of Jawaharnagar CHS Ltd. There was dispute between the Jawaharnagar CHS Ltd. and Champabai Pol in the Cooperative Court, Kolhapur. In that case, the cooperative society admitted the Champabai as owner of the suit premises. The dispute before the cooperative court was settled between the Jawaharnagar CHS Ltd. and Champabai. Hence, the society made an application for withdrawal of the said dispute. Same was withdrawn on 13.05.1980.

5. The learned counsel for the defendant Nos.2 to 4 submits that thereafter how the respondent plaintiff acquired the title of the suit premises is a disputed question in the proceedings. He submits that plaintiff No.1 claimed that his wife Pushpa Pol was related to Champabai. Therefore, her father received the suit property. He submits that the plaintiff placed on record only 7/12 extract of suit plot No.M-7. He submits that apart from 7/12 extract, the plaintiff failed to produce on record any documentary evidence to show them as owner of the suit property. He submits that both the courts below failed to

appreciate that the title of the suit property cannot be decided only on the basis of revenue entries. In support of this contention, he relied on the judgment of the Apex Court in the matter of State of *State of H.P. Vs. Keshav Ram and Ors. (1996) 11 SCC 257 (paragraph No.5).*

6. The learned counsel for defendant Nos.2 to 4 submit that both the courts below erred in coming to the conclusion that in view of section 116 of the Indian Evidence Act, 1872, the tenant has no right to call upon the landlord to prove his ownership. He submits that in the present proceedings, defendant Nos.2 to 4 filed their written statement in the trial court raising a specific plea in written statement that the plaintiffs are not owner of the suit premises and hence, the suit itself was not maintainable. He submits that the tenant has right to call upon the landlord to prove his ownership in rent matters. In support of this contention, he relies on the Apex Court judgment in the matter of *D. Satyanarayana Vs. P. Jagadish 1987 (4) SCC 424 (paragraph 3 and 4)* and *Mangat & and Anr. Vs. Sardar Meharban Singh and Ors. 1987 SC 1656 (para 11).*

7. The learned counsel for the defendant Nos.2 to 4 submit that in the present proceedings since there are concurrent findings of fact recorded by both the courts below on the ground of *bona fide* requirement and arrears of rent, he is pressing the Civil Revision Application only on one ground i.e. the plaintiff failed and neglected to prove the ownership of the suit premises. He submits that on the basis of the above mentioned submissions and the law declared by the Apex Court, the judgment and decree passed by both the courts below,

deserve to be set aside. He submits that if Civil Revision Application is not allowed, irreparable loss will be caused to the defendant Nos.2 to 4.

8. On the other hand, the learned counsel for the plaintiff vehemently opposed the Civil Revision Application. He submits that both the courts below concurrently held that the plaintiff is entitled to vacant and peaceful possession of the suit premises. He submits that the plaintiffs have placed on record 7/12 extract and established their title in respect of the suit premises. Apart from that they examined the witnesses. He submits that both the courts concurrently held that the plaintiff is in *bona fide* need of the suit premises. He submits that both the courts below concurrently held that the defendants failed and neglected to pay rent within stipulated time. He submits that, normally, the court should not entertain the revision application challenging the concurrent findings of facts recorded by both the courts below, unless and until a grave irregularity is pointed out by the applicant. He submits that in the present proceedings the applicant failed and neglected to prove any grave irregularity committed by the courts below at the time of passing decree for possession. Hence, there is no substance in the Civil Revision Application. Same is liable to be dismissed.

9. The Apex Court in the matter of ***V. Sumatiben Maganlal Manani (dead) by L.Rs. Vs. Uttamchand Kashiprasad Shah and Anr. 2011 (6) MLJ 1*** held that the High Court, in exercise of its revisional jurisdiction, should not interfere with the findings of facts properly arrived at by the courts below. In the matter of ***Sarla Ahuja Vs. United***

India Insurance Co. Ltd. AIR 1999 SC 100 the Apex Court held that it is not permissible to the High Court to reappraise and re-appreciate the evidence for reaching a different finding in revisional jurisdiction. In the matter of ***Sunilkumar and Anr. Vs. Anilkumar 2008 (9) SCC 241*** the Apex Court held that normally, the High Court should not interfere with the concurrent findings of fact in Rent Act matters unless and until the orders passed by the courts below are perverse and contrary to law.

10. The Apex Court, in the matter of ***Sara Rauf and Anr. Vs. Durgashankar Ganeshlal Shroff 2007 (4) MLJ 129*** held that the landlord is a best judge of his essential requirements. He has complete freedom in the matter. It is not concern of the courts to dictate to the landlord, how, and in what manner he should live or to prescribe for him the residential standard of their own.

11. I heard both sides at length. I have gone through the judgment and decree passed by both the courts below, copy of plaint, written statement of the plaintiff and other documents placed on record. Both the courts concurrently held that the plaintiff has made out a case for decree on the ground of *bona fide* requirement as well as arrears of rent. The plaintiff placed on record revenue documents in respect of the suit premises to prove their ownership though defendant Nos.2 to 4 disputed those revenue documents, they failed to place on record any contrary evidence in respect of the revenue documents. Apart from that the plaintiff Shri Rajendra Laxman Pol in his cross-examination specifically stated that Champabai was related to his wife Pushpabai Pol. Her wife acquired suit property from Champabai. To that effect, the concerned authority made an appropriate amendment in the

revenue record.

12. The issue raised by the advocate for the applicant defendant Nos.2 to 4 is only about the ownership of the respondent plaintiffs. The plaintiffs in support of their case placed on record revenue entries of the suit premises. As defendant Nos.2 to 4 failed to produce on record any contrary evidence, those entries were accepted by both the courts below and held that the plaintiff is owner of the suit premises.

13. The authority cited by the defendant in the matter of Keshav Ram and others (supra) is not applicable in the present proceedings. In that case, the defendant proved by leading evidence that on the basis of the revenue entries, the plaintiff cannot claim title of the property. That is not the case in the present proceedings. In the case in hand, the defendant failed to produce any documentary evidence to prove the facts, other than as stated in the revenue record. It is to be noted that, under section 157 of the Maharashtra Land Revenue Code, 1966, there is a presumption of correctness of revenue entries. The presumption can be rebutted by producing contrary evidence. However, after going through the material on record and the evidence, I do not find that the defendants have produced such evidence. Hence, the objection raised by the defendant about the ownership of the plaintiff is not sustainable.

14. Both the courts below rightly held that the tenant cannot dispute the ownership of the plaintiff - landlord in view of section 116 of the Indian Evidence Act. Section 116 reads thus;

“116. Estoppel of tenant; and of licensee of person in possession: No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

15. Bare reading of section 116 shows that a tenant cannot dispute ownership of a landlord. The authority cited by the defendant in the matter of D. Satyanarayan (supra) and Mangat Ram and others (supra) cannot be applicable in the facts and circumstances of the present case. Section 116 of the Evidence Act puts an embargo on a tenant of an immovable property during continuation of tenancy, to deny the title of his landlord at the beginning of his tenancy. The Apex Court in the matter of *Keshar Bai Vs. Chhunulal* 2014 11 SCC 438 held that in view of section 116 a tenant has no right to dispute the title of the landlord. Paragraph 14 to 16 of the said judgment read thus:

14. There is a specific reference to the registered document under which the Appellant purchased the suit building from the earlier landlord in the plaint. Yet, in the written statement the Respondent denied the title of the Appellant. We notice that there are several documents on record relating to the ownership of the Appellant, apart from the registered sale deed, such as municipal tax receipts, ration card etc. Yet, the Respondent refused to acknowledge the Appellant's title. He denied it in his evidence. This is not a simple case of denial of derivative title by a person who did not know about the purchase of the building by the landlord. Even after going through the relevant documents relating to the Appellant's title the Respondent feigned ignorance about it. The High Court has accepted that in his cross-examination the Respondent has stated that he was not accepting

the Appellant as his landlady. The High Court has, however, gone on to say that by this piece of evidence no decree of eviction can be passed against the Respondent under Section 12(1)(c) of the M.P. Act because the Respondent will have no occasion to establish in what circumstances he denied the title of the Appellant. The High Court has further held that the Respondent was within permissible limit in asking the Appellant to produce documentary evidence about his title as a landlord. The High Court, in our opinion, fell into a grave error in drawing such a conclusion. Even denial of a landlord's title in the written statement can provide a ground for eviction of a tenant. It is also settled position in law that it is not necessary that the denial of title by the landlord should be anterior to the institution of eviction proceedings. This is so stated by this Court in ***Majati Subbarao v. P.V.K. Krishnarao (1989) 4 SCC 732.***

15. The High Court has expressed that the Respondent was justified in asking the Appellant to produce the documents. Implicit in this observation is the High Court's view that the Respondent could have in an eviction suit got the title of the Appellant finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally.

16. Similar question fell for consideration of this Court in ***Bhagadi Kannabalu Vs. Viggina Pydamma (2006) 5 SCC 532.*** In that case it was argued that the landlady was not entitled to inherit the properties in question and hence could not maintain the application for eviction on the ground of default and sub-letting under the A.P. Tenancy Act. This Court referred to its decision in ***Tej Bhan Madan v. II Additional District Judge and Ors. (1988) 3 SCC 137*** in which it was held that a tenant was precluded from denying the title of the landlady on the general principle of estoppel between landlord and tenant and that this principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. Section 116 of the Evidence Act is clearly applicable to such a situation. This Court held that even if the landlady was not entitled to inherit the properties in question, she could still maintain the application for eviction and the finding of fact recorded by the courts below in favour of the

landlady was not liable to be disturbed. The position on law was stated by this Court as under: (Bhogadi Kannababu case SCC p.538, para 19)

“19. In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceeding.”

16. Considering the above mentioned facts, the law declared by the Apex Court, particularly in the matter of Keshar Bai (supra) and the reasoning given by both the courts below, I am of the opinion that the applicant - tenant has failed to make out any case to entertain the Civil Revision Application against the concurrent findings of fact recorded by the courts below. Hence, the Civil Revision Application stands rejected.

17. At this stage, the learned counsel for the applicant tenant seeks stay of the operation and implementation of this order for a period of 12 weeks from today. Same is vehemently opposed by the advocate for the plaintiff.

18. Considering the fact that the tenant is in possession of the suit premises for last several years, in the interest of justice, the operation and implementation of this order is stayed for a period of 10 weeks from today on usual undertaking, to be filed by the tenant in this court, with copy to other side.

(K.K. TATED, J.)