

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 603 OF 2015

Shri. Bholenath Bansraj Yadav

...Applicant

Versus

Shri. Rajendra Satbhadur Singh
and Ors

...Respondents

....

Mr. V.T. Lulia, Advocate for the Applicant.

Mr. J.P. Singh a/w. Mr. R.S. Maurya, Advocate for Respondent
Nos.1(a) to 1(d), 4 and 6 to 12 .

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CORAM : R. G. KETKAR, J.

DATE : 5th July, 2016

P.C.

1. Heard Mr.V.T. Lulia, learned Counsel for the applicant and Mr. J.P. Singh, learned Counsel for respondent Nos.1(a) to 1(d), 4 and 6 to 12 , at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'plaintiff', has challenged the judgment and decree dated 30.11.2006 passed by the learned Judge, presiding over Court Room No.37 of the Court of Small Causes, Mumbai (Bandra Branch) in R.A.D. Suit No.1238/1993 as also the

judgment and decree dated 10.9.2015 passed by the Appellate Bench of Small Causes Court at Mumbai (Bandra) in Appeal No.410/2006. By these orders, the Courts below dismissed the suit instituted by the plaintiff for declaration of tenancy rights in respect of room No.3 in Sat Bahadursingh Chawl at Sant Meerabai Road, Ghartan Pada, Dahisar (E), Mumbai – 400 068 (for short, 'suit premises') as also for perpetual injunction restraining the defendants from dispossessing the plaintiff from the suit premises.

3. In support of this application, Mr. Lulia strenuously contended that the plaintiff is residing in the suit premises from 1982. He invited my attention to (i) extract of voters list dated 25.8.1994 in respect of year 1994 as also (ii) the report of the Court Commissioner dated 29.1.1997. In pursuance of the order dated 9.1.1997, the Commissioner was appointed to inspect the suit premises and to verify which of the room is occupied by the plaintiff and nature of his possession and also to consider the rough sketch of property which is annexed with the plaint. Mr.Lulia submitted that in paragraph-25 of the report it was stated that when the Court Commissioner visited the suit

premises he found Jadavati Devi (wife of the plaintiff) and Sandeep and Pradip (sons of the plaintiff). Mr. Lulia submitted that respondent No.1 had instituted collusive suit against one Chhabinath Singh, brother-in-law of the present plaintiff and obtained collusive decree against said Chhabinath Singh in R.A.E & R. Suit No.784/1993. On the basis of the collusive decree obtained by respondent No.1 herein, he is trying to evict the plaintiff who is in settled possession as a tenant in the suit premises. He further relied upon following decisions :

- [i] Kamala Bakshi v. Khairati Lal,
2000 Supreme Court & Full Bench Rent Cases 161
- [ii] Gadakh Yashwantrao Kankarrao v. E.V. Alias Balasaheb Vikhe Patil and others,
AIR 1994 SC 678
- [iii] S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs and others,
AIR 1994 SC 853
- [iv] The Commissioner of Income-tax, West Bengal II, Calcutta v. Durga Prasad More,
AIR 1971 SC 2439
- [v] Sandoz (India) Limited v. Surinder Anand and another
1991(3) Bom.C.R. 680
- [vi] Hanumantrao Ramrao Deshmukh v. Krishnabai w/o. Ramrao Deshmukh
1986(1) Bom.C.R. 50
- [vii] Sk. Jameel Ahmad s/o. Sk. Farid v. Smt. Naseem Gulab sk. w/o. Sayed Samshur Rahman Kadari,
1981 Bom.C.R. 808
- [viii] Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others,
AIR 1960 SC 100 (V 47 C 18)

4. Relying upon these decisions, Mr. Lulia contended that from the preamble of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') it is quite clear that this Act was enacted for making provisions for the better control of the rent of houses and to prevent unreasonable eviction of tenants. The Act has been enacted to protect the tenants against exploitation by unreasonable evictions and, therefore, will have to be construed strictly against the landlord. The Scheme of the Act is to prevent unreasonable eviction of the tenants by landlord and to provide for eviction on specific grounds. If any of the Sections is susceptible of two interpretation, the interpretation which enlarges protection of the tenant will have to be preferred rather than which restricts it.

5. From the evidence on record, it will be evident that the plaintiff is inducted as a tenant and is residing in the suit premises since year 1982. The Courts below have committed error in dismissing the suit. He, therefore, submitted that the application requires consideration.

6. On the other hand Mr. J.P.Singh invited my attention

to the admission given by the plaintiff during the course of cross-examination as under :

“I am not having any documentary evidence about Room No.21 but I am having in respect of Room No.3. The witness again says that he has no documentary evidence in respect of either Room No.3 or Room No.21.”

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The short question is whether the plaintiff has established his tenancy rights in respect of the suit premises. The Courts below and in particular the Appellate Court after appreciating the evidence on record has observed in paragraph-40 that the evidence adduced by the plaintiff is not trust-worthy. The plaintiff deposed that since 1982 he has been residing in the suit premises. During the course of cross-examination, he conceded that in December, 1984 or January, 1985 he came to reside in room No.13 with his maternal uncle Rammurat Yadav alias Bhole Yadav. In paragraph-41 the Appellate Court considered the admissions of the plaintiff that he has no documentary evidence to show that either room No.3 or room No.21 was in his possession. He also admitted that he

has no rent receipt either of room No.3 or room No.21. The plaintiff also admitted that respondent No.1 landlord has issued rent receipt to all other tenants. The Appellate Court, therefore, held that if at all respondent No.1 was issuing rent receipts to all the tenants and the very fact that the plaintiff was not having any rent receipts shows that the plaintiff has not established his tenancy rights. In paragraph-44 the Appellate Court also noted that the suit premises was shown in possession of Rammurat Yadav alias Bhole Yadav.

8. Mr.Lulia submitted that the Courts below did not frame proper issues, namely, whether the suit and decree obtained in that suit by respondent No.1 against Rajendrasingh was collusive or not which has resulted into miscarriage of justice. In my opinion, said issue is totally irrelevant for considering the plaintiff's case. The plaintiff has not adduced any evidence to substantiate his tenancy rights. Thus, the Courts below after appreciating the evidence on record, concurrently held that the plaintiff is not the tenant of the suit premises.

9. Reliance placed on the judgments cited above does not

advance the case of the plaintiff. by The plaintiff was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. The plaintiff was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. 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.

(R. G. KETKAR, J.)

Deshmane (PS)