

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

**FIRST APPEAL NO.1671 OF 2011
ALONGWITH
CIVIL APPLICATION NO.750 OF 2013**

Draupadi Passi Appellant

vs.

MHADA & Others Respondents

Mr. Ashutosh Tripathi i/by M/s Legal Point, Advocate for the Appellant.

Mr. Deepak Chitnis i/by M/s Deepak Chitnis-Chiparikar & Co., Advocate for the Respondents.

Coram : Smt. R.P SondurBaldota, J.

Date : 11th April, 2016

P.C.

1 The appellant, the original plaintiff challenges the judgment and decree dtd. 9th September, 2012 passed by the Bombay City Civil Court dismissing her suit for reliefs of declarations and a permanent injunction in respect of the suit property. The first declaratory relief sought was that she is tenant in respect of portion admeasuring 100 sq. ft. of the suit premises and cannot be evicted therefrom otherwise than by due process of

law. The second relief of declaration was that respondents no. 3 to 6 have no right, title and interest to the suit premises. The permanent injunction sought was to restrain respondents no.1 and 2 from disturbing her occupation in the suit premises otherwise than by due process of law.

2 The property involved in the suit is Room No.1, Chawl No.1/A, Jariwala Chawl, Mahim, Mumbai, admeasuring 200 sq. feet. According to the appellant, her family members had been in possession of the entire room since beginning but later respondents no.3 to 6 trespassed into the same and started occupying portion thereof admeasuring 100 sq. ft. As per para 5 of the plaint, they are occupying loft portion inside the main room and the appellant is left with ground floor portion of the main room, from where the staircase to the loft is constructed. Respondents no.3 to 6 have also allegedly been keeping various articles and things in the appellant's portion of the room making it impossible for her to enjoy the same. Respondents no.1 and 2 are Maharashtra Housing and Area Development Board and Maharashtra Housing Repairs and Construction Board, who are the owners of the suit property. They are in the process of redevelopment of the property. The appellant claims that her husband one Bramhadin was entitled to the tenancy in respect of the suit premises.

3 Respondents no. 3 to 6 contested the suit alleging that the appellant has suppressed material facts from the court and that the suit is bad for non-joinder of necessary parties. They are one Jitendra B. Passi, Krishna B. Passi and Sunny P. Passi, who claim a right in the suit premises are also residing therein. These defendants allege that the appellant is a rank trespasser, who is trying to get a foothold into the property.

4 Apart from denying the claim of the appellant of the suit premises, respondents no. 3 to 6 contended that even the description of the premises by the appellant is not proper. They alleged that the suit premises consist of a room, admeasuring 10ft. x 10ft. with open ota and common passage admeasuring 5ft. x 10 ft. Their grandfather Bachai Passi was the original tenant. Initially, Jariwala chawl was owned by M/s Galaxy Builders and rent receipts were issued by Galaxy Builders in favour of Bachai Passi. Later respondents no.1 and 2 carried out repairs to Jariwala Chawl and they became it's owners. The Estate Manager of respondents no.1 and 2 issued rent receipts in the name of respondents no. 3 to 6 after the death of their grandfather on 15th January, 1973. According to the respondents, the husband of the appellant and one Ramsukh Dhobi trespassed into the passage outside of the suit premises. After some days, they brought their family members. The husband of the appellant was an alcoholic and was seriously ill

due to excessive drinking. The appellant came to the premises from the native place under the guise of looking after her husband. She had assured that once her husband recovered, she would return to the native place. But she never returned. Thus, according to the respondents no. 3 to 6, the appellant is a rank trespasser in respect of the suit premises. Respondents no.3 to 6 have filed a suit in the Bombay City Civil Court being S.C. Suit No. 3765 of 1996, wherein they have prayed for a mandatory order directing the appellant to remove herself from the suit premises. These facts have undoubtedly been suppressed by the appellant in the plaint.

5 By the impugned judgment and decree, the Bombay City Civil Court held that the appellant had failed to establish that she is the tenant of the suit premises and that she is entitled to alternate accommodation in lieu thereof. It further held that none of the respondents are likely to dispossess her by a process otherwise than by due process of law.

6 The parties led evidence in support of their respective cases. In addition to the oral evidence, both the sides produced documents in support of their respective claim. The trial court found that the claim of the plaintiff of being tenant in respect of the premises is not supported by any of the documents. Respondents no. 3 to 6 on the other hand produced documents of

rent receipts issued in the name of their grandfather by name Mr. Bacchai Dattadin Passi. There is no dispute that Mr. Bacchai Passi was the tenant in respect of the premises. Even the records maintained by respondents no.1 and 2 show that Mr. Bacchai Passi was the tenant in respect of the suit premises. The vacation notices issued by respondents no. 1 and 2 to the occupants of the premises were to respondent no.3. No notice was ever issued to the appellant.

7 The appellant is thus seen to be guilty of suppression of material facts. She has not offered any explanation for the same. All these facts have been deposed by respondent no.3 in his evidence, on which there is no cross-examination whatsoever. Further the suit is bad for misjoinder of the other occupants from the premises. As regards the merits of the claim of the appellant, the Bombay City Civil Court noted that the documents of Bank pass-book, Identity Cards issued by Election Commissioner, copy of the complaints filed with police do not establish the right of tenancy. It noted that some documents are in respect of room no.1A, whereas some are in respect of Jariwala Chawl Building Room 1/1. The appellant failed to produce any rent receipt in respect of the suit premises. Respondents no. 3 to 6 on the other hand produced rent receipts, which were earlier, admittedly in the name of the grandfather of respondents no.3 to 6 from the year

1967 onwards. Then there are rent receipts produced by respondents no. 3 to 6 in the name of Mrs. Saroj Bachai Dattadin and thereafter in the names of respondents no. 3 to 6. Admittedly, the appellant was not issued any vacation notice by respondents no. 1 and 2 at any point of time. These facts are sufficient to hold that the appellant has failed to establish her right to the suit premises. As such the suit was liable to be dismissed on merits also.

8 The Bombay City Civil Court has in its detailed decision correctly appreciated the entire oral as well as the documentary evidence produced by the parties, to arrive at the findings stated above. Hence, the First Appeal is dismissed.

9 In view of dismissal of the First Appeal, the Civil Application No.750 of 2013, does not survive. The same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)

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

**CIVIL APPLICATION NO.2394 OF 2014
IN
FIRST APPEAL NO.1671 OF 2011
IN
S.C. SUIT NO.392 OF 2007**

Draupadi Passi Applicant

vs.

MHADA & Others Respondents

Mr. Ashutosh Tripathi i/by M/s Legal Point, Advocate for the Applicant.

Mr. Deepak Chitnis i/by M/s Deepak Chitnis-Chiparikar & Co., Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.

Date : 11th April, 2016

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1 This Civil Application is taken out by the applicant for production of additional evidence at the appellate stage. The two documents sought to be produced are report of the Court Commissioner appointed in S.C. Suit No. 3765 of 1996 and the order dtd. 8th April, 2004 by which the Bombay City Civil Court dismissed the suit. Bare perusal of the documents is sufficient to

know that the same are not relevant to establish the right of the applicant to the suit premises. Hence, the Civil Application is dismissed.

(Smt. R.P. SondurBaldota, J.)