

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.949 OF 2014

Laxman T. Nirankari and through P.O.A.
Dayaldas T. Nirankari ... Applicant
Vs.
Shriniwas Gopal Pandit ... Respondent

WITH
CIVIL REVISION APPLICATION NO.1045 OF 2014

Jaisingh Dadoba Jadhav through P.O.A.
Anil Jaisingh Jadhav ... Applicant
Vs.
Shriniwas Gopal Pandit ... Respondent

WITH
CIVIL REVISION APPLICATION NO.93 OF 2015
WITH
CIVIL REVISION APPLICATION NO.94 OF 2015

Vinayak Krishna Chougule and others ... Applicants
Vs.
Shriniwas Gopal Pandit ... Respondent

Mr. Vaibhav A. Sugdare for Applicant in C.R.A.No.949 of 2014.
Mr. S. S. Patwardhan for Applicant in C.R.A.No.1045 of 2014.
Mr. Rahul P. Walvekar for Applicants in C.R.A.No.93 and 94 of 2015.
Mr. P. S. Dani i/b. Mr. Harshad M. Inamdar for Respondent in all
C.R.As.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 08, 2016

ORDER :

Heard Mr. Sugdare, learned Counsel for applicant in C.R.A. No.949 of 2014, Mr. Patwardhan, learned Counsel for applicant in C.R.A.No.1045 of 2014, Mr. Walvekar, learned Counsel for applicants in C.R.A.No.93 of 2015 and 94 of 2015 and Mr. Dani, learned Senior Counsel for respondent in all the Applications at length. Rule. Mr. Inamdar waives service for respondent. At the request and by consent of

the parties, Rule is made returnable forthwith and all the Applications are taken up for final hearing.

2. Civil Revision Application No.949 of 2014 arises out of the judgment and decree dated 30.04.2012 passed by the learned 9th Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.961 of 2008 as also the judgment and decree dated 15.07.2014 passed by the learned District Judge, Kolhapur in Regular Civil Appeal No.225 of 2012. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff' under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Civil Revision Application No.1045 of 2014 arises out of the judgment and decree dated 05.10.2011 passed by the learned 4th Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.957 of 2008 as also the judgment and decree dated 15.07.2014 passed by the learned District Judge, Kolhapur in Regular Civil Appeal No.366 of 2011. By these orders, the Courts below decreed the Suit instituted by the plaintiff under Section 16(1)(g) of the Act.

4. Civil Revision Application No.93 of 2015 arises out of the judgment and decree dated 08.11.2012 passed by the learned 10th Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.959 of 2008 as also the judgment and decree dated 07.08.2014 passed by the learned District Judge, Kolhapur in Regular Civil Appeal No.557 of 2012. By these orders, the Courts below decreed the Suit instituted by the plaintiff under Section 16(1)(g) of the Act.

5. Civil Revision Application No.94 of 2015 arises out of the judgment and decree dated 08.11.2012 passed by the learned 10th Joint

Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.960 of 2008 as also the judgment and decree dated 07.08.2014 passed by the learned District Judge, Kolhapur in Regular Civil Appeal No.558 of 2012. By these orders, the Courts below decreed the Suit instituted by the plaintiff under Section 16(1)(g) of the Act.

6. The short controversy in all these Applications is whether plaintiff has other premises available which will satisfy need set up by him. In particular, learned Counsel for applicants have invited my attention to the fact that plaintiff is one of the partners in Shubhamkaroti Developers. The said firm has constructed commercial and residential complex by name Cindrella Castle. On the second floor, plaintiff had purchased commercial premises admeasuring 1140 sq.ft. Though this fact was specifically pleaded in paragraph 9-A of the written statement filed in R.C.S.No.957 of 2008 and the said fact is also borne out from the cross-examination of plaintiff's witness, the learned District Judge has not dealt with this aspect at all. Mr. Patwardhan invited my attention to paragraphs 26 and 27 of the impugned order passed in R.C.A.No.366 of 2011. He also relied upon decision of this Court in ***Tarachand Vs. Durgashankar, 2004 (Supp.) Bom.C.R. 333***, and in particular paragraph 8 thereof.

7. Mr. Dani has invited my attention to the trial Court's judgment in R.C.S.No.961 of 2008, and in particular paragraph 22 thereof. In paragraph 22, the learned trial Judge took judicial notice of the fact that plaintiff's children were pursuing higher studies and in order to meet educational expenses, plaintiff was required to sell the premises in Cindrella Castle.

8. Mr. Patwardhan submitted that plaintiff has set up requirement of

his daughter. However, after marriage, she has shifted to Mumbai. There is no evidence on record to show that she, being the Architect, is carrying on any professional activities in Kolhapur. Mr. Patwardhan submitted that Corporation has not recognised plaintiff's daughter as an Architect by issuing certificate to that effect. On the other hand, Mr. Dani invited my attention to the Certificate of Registration dated 26.07.2013 issued by Kolhapur Municipal Corporation. He submitted that the daughter of the plaintiff is carrying on her professional activities in Kolhapur. He further states that plaintiff will adduce additional evidence in support of his case. Learned Counsel for the applicants submitted that defendants will also adduce evidence in support of their respective cases.

9. After perusing the judgment in R.C.A.No.366 of 2011, it appears that the learned District Judge has not dealt with the acquisition and sale of premises in Cindrella Castle at all.

10. Mr. Dani, upon taking instructions from the respondent, who is present in the Court, submitted that as the District Court has not considered acquisition and sale of the premises in Cindrella Castle, the impugned order may be set aside thereby restoring the appeals to the District Court. He has tendered photocopy of the Aadhar Card of respondent. The same is taken on record and marked 'X' for identification. Learned Counsel for the parties submitted that they may be permitted to adduce additional evidence in support of their respective cases.

11. In view thereof, by consent of the parties, Civil Revision Applications are disposed of in the following terms:

a. judgment and decree dated 15.07.2014 passed by the learned

District Judge in Regular Civil Appeal No.225 of 2012 is quashed and set aside and Regular Civil Appeal No.225 of 2012 is restored to the file of the District Court;

b. judgment and decree dated 15.07.2014 passed by the learned District Judge in Regular Civil Appeal No.366 of 2011 is quashed and set aside and Regular Civil Appeal No.366 of 2011 is restored to the file of the District Court;

c. judgments and decree dated 07.08.2014 passed by the learned District Judge in Regular Civil Appeal No.557 of 2012 and Regular Civil Appeal No.558 of 2012 are quashed and set aside and Regular Civil Appeal No.557 of 2012 as also Regular Civil Appeal No.558 of 2012 are restored to the file of the District Court;

d. Learned Counsel for the parties state that they will appear before the District Court on 22.08.2016 and for that purpose, no fresh notice be issued to them;

e. Parties are permitted to lead additional evidence in support of their respective case. District Court may either take such evidence or direct the trial Court from whose decree the appeals are preferred, to take such evidence and send it to the appellate Court;

f. Parties assure that they will extend full co-operation for recording additional evidence and the same exercise shall be completed within three months from 22.08.2016;

g. In the event of trial Court recording evidence, after completion of recording of evidence, the learned trial Judge will transmit the evidence forthwith to the District Court;

h. After receipt of the evidence / completion of recording of the evidence by the District Court, the District Court is requested to

decide the Appeals within three months from the receipt / recording of the evidence;

i. All contentions of the parties on merits are expressly kept open.

12. Rule is made absolute in all the applications in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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