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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.706 OF 2014

Rambriksha Rajnath Mishra ..Applicant.

V/s.

M/s. Sitaram Enterprises & Ors. ..Respondents.

Mr.G.S.Godbole with Digvijay Singh i/b. R.B.Singh & Associate for the Applicant.

Mr. Simil Purohit i/b. Vinod Jayde for the Applicant in Respondent No.1.

CORAM : N.M.Jamdar, J.

DATED : 1 February, 2017

ORAL ORDER

By this Revision Application, the Applicant has challenged the concurrent judgments and orders passed by the Small Cause Court Judge, Mumbai and the Appellate Bench of the Small Cause Court, Mumbai decreeing the suit filed by the Respondents-landlords and dismissing the appeal of the Applicant.

2. The suit bearing R.A.E. & R. Suit No.1247 of 1995 was initially filed by Smt. Manohardevi Naharmal Mehta and Smt. Bhuridevi Chandmal Lodha. Subsequently, M/s.Sitaram Enterprises

was brought on record as a Plaintiff in the suit. The suit property is a plot of land admeasuring 27 x 20 ft. with a structure admeasuring 6 x 10 ft. on a plot abutting to Kasturba Cross Road No.9 situated on C.S. No.38, 38/1/3 at village Kanheri, Borivili (East) Mumbai. It was stated in the plaint that the property was owned by Chandmal Bhimraj Lodha. Subsequently, the property came to the share of Smt.Bhuridevi Lodha and thereafter by way of family arrangement dated 17 October, 1994, it had come to Smt.Manohardevi. It was stated by the Respondents that the Applicant had not paid the rent of the premises and had also carried out permanent constructions without the permission of the Respondents. Also that the premises were reasonably and *bonafide* required for the occupation of the Respondents. Accordingly, the Respondents sought possession of the suit premises. Written statement was filed, in which the Applicant primarily contended that the Respondents / Plaintiffs were not the owners of the suit property and there is nothing placed on record to demonstrate that the Respondents were the owners. The grounds taken in the plaint for eviction of the Applicant, were resisted. The learned Small Cause Court Judge held that the Respondents had proved that the Respondents-landlords were the owners of the suit premises and that the Court has jurisdiction. As regards the construction of permanent nature and subletting, these grounds were against the Applicant. The suit was decreed by the judgment and order 31 August, 2012 on all the grounds. An appeal was filed by the Applicant bearing Appeal (A-1) No.50 of 2012. The

Appellate Bench of the Small Cause Court, Mumbai dismissed the appeal by judgment and order dated 11 April, 2014.

3. Heard the learned counsel for the parties.

4. The learned counsel for the Applicant submitted that the Respondents-Plaintiffs did not have any right to institute the suit, not being the landlords of the suit premises, the power of attorney was not produced and the deed of settlement which were relied upon were also not produced. It was contended that by unilaterally issuing a letter stating that the rights have been transferred to some other person, there is no effective and valid attornment and the Applicant has disputed the fact that the Respondents are owners of the suit premises by reply to a notice and thereafter in the further proceedings. It was submitted that the rent receipt issued Smt. Bhuridevi, which is on record has not been considered in its proper perspective. The learned counsel for the Applicant relied upon the decision of the Division Bench of the Delhi High Court in the case of ¹*Mohd. Ilyas and another V/s. Mohd. Adil & Ors.* to contend that attornment by the tenant would not straightaway mean acceptance of the third party as a landlord and merely because a letter of attornment was received, the tenant cannot be estopped from challenging the transfer of ownership. The learned counsel for the Applicant submitted that both the Courts have not appreciated the fact that the family arrangement has not been placed on record and

¹ A.I.R. 1994 Delhi 212

the only ground on which the decree is passed in favour of the Respondents-landlords is the so called attornment.

5. The learned counsel for the Respondent on the other hand submitted that all tenants have accepted the Respondent as the landlord including the Applicant. Even going by the case of the Applicant, it is Smt. Bhuridevi who has issued a valid deed in favour of the Respondent partnership firm and that rent has been paid to the Respondents. Therefore, keeping aside the role of Manohardevi altogether, there is no defect in the decree passed in favour of the Respondents-landlords. It was also contended that the suit has been filed by the Applicant against the Municipal Corporation in which the Respondent firm is accepted as a landlord.

6. There are two grounds that the Respondent has pleaded, firstly, that the property was assigned by Smt. Bhuridevi to Smt. Manohardevi and the attornment letter has been issued at the instance of Bhuridevi in favour of Manohardevi who had entered into a registered deed in respect thereof with the Respondent partnership firm and the rent has been paid pursuant to the letter of attornment. The second ground is that even assuming that Smt. Bhuridevi continues to be the owner, it is the case of the Applicant that Smt. Bhuridevi was also a party to the registered deed in favour of the Respondent partnership firm and that Smt. Bhuridevi was one of the Plaintiff.

7. As far as the letter of attornment is concerned, what is the conduct of the parties surrounding the letter of attornment, would differ from case to case and this would be a question of fact. In the present case, the letter of attornment has been signed by the Applicant. Thereafter, cheques have been issued on 17 September, 1997 pursuant to the letter of attornment though the payment refers to the period prior to the attornment. The learned counsel for the Applicant sought to contend that these receipts are fabricated and the original receipts which are produced on record clearly shows that they were issued for the same period by Bhuridevi. However, the Applicant has not stepped in the witness box to prove the veracity of the receipts and has offered himself to cross-examination. The Courts, therefore, rightly disbelieved this theory. Therefore, going by these factors, it will have to be held that the Applicant acted in furtherance of the letter of attornment.

8. Even keeping aside these factors, in the written statement, the Applicant has stated that it is Bhuridevi who was the landlord of the premises. If that is the stand of the Applicant, then Bhuridevi had instituted the present suit and Bhuridevi had executed a registered deed in favour of the Respondent partnership firm. The Respondent partnership firm, therefore, acquired a clear title from Bhuridevi. There is no error committed by both the Courts in rendering a finding that the Respondent was entitled to file a suit.

After the assignment deed was executed in favour of the Respondent partnership firm, the rent was sent by the Applicant on 13 December, 2001 and 27 August, 2001. Not only this, in a suit filed by the Applicant challenging the action of the Municipal Corporation bearing L.C. Suit No.3544 of 2004, the Applicant admitted the Respondent partnership firm as the landlord of the premises. In view of these facts which are brought on record, both the Courts have taken a view that the Respondent firm was entitled to file a suit for eviction and there is no error committed in taking this view. No interference is warranted in the revisional jurisdiction. The Revision Application is accordingly rejected.

9. At this stage, the learned counsel for the Applicant requests that the decree be not executed for a period of 10 weeks. I am inclined to grant 8 weeks, however some time will be required for obtaining a copy of the order. The Applicant till file affidavits of all adult members in the family presently residing, that they alone are in possession and they will not create any third party rights, within a period of two weeks from today. If such affidavits are filed, the possession of the Applicant will not be taken for a period of 10 weeks from today. If the affidavits are not filed, the Respondent will be free to execute the decree and also the conduct of the Applicant will be view as breach of the order of the Court.

(N.M.Jamdar, J.)