

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

WRIT PETITION NO. 2944 OF 1997

Shri Satyanarayan Raghu Bans Upadhyay
(Since deceased through Lrs.)

1A. Prabhavati Satyanarayan Upadhyay & Ors. ...Petitioners

Versus

Shri Ramprasad Tiwari
(Since deceased through Lrs.)

1. Ramsinghare Ramprasad Tiwari & Ors. ...Respondents

Mr.R.V. Pavaskar h/f Mr.S.P. Kanuga for the Petitioners.

Mr.Yogesh Thorat a/w Mr.Ashok B. Tajane for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 01st SEPTEMBER 2017

P.C.

1. Heard Mr.Pavaskar for the petitioners and Mr.Yogesh Thorat and Mr.Ashok B. Tajane for respondent No.3.

2. The challenge in this petition is to the judgments and decrees dated 28th November 1989 and 14th February 1997 made by Small Causes Courts and the Appellate Bench of the Small Causes Court ordering the eviction of the petitioners from the suit premises on the ground of default in payment of rent.

3. Although, the application seeking eviction of the petitioners were filed on several grounds, both the Trial Court as well as the Appeal Court have ordered the eviction only on the ground of default in payment of rent holding that the other grounds for eviction were not made out.

4. Mr.Pavaskar, the learned counsel for the petitioners submits that in the present case, there is no dispute as to the relationship between the predecessors in title of the present parties to the proceedings. He submits that the petitioners predecessor-in-title Satyanarayan Upadhay (Satyanaryan) was the tenant in respect of the suit premises. The predecessor in title of the respondent i.e. Ramprasad Tiwari (Ramprasad) was the landlord. In fact, it is the case of Mr.Pavaskar that Ramprasad was not a sole landlord but his brother Sitala Prasad Tiwari, who is the co-owner of the suit premises was also the landlord. Sitala Prasad's wife i.e. Ramdulari is the sister of Satyanarayan. Mr.Pavaskar, submits that Satyanaryan had paid to his sister a sum of Rs.2,500/-, which sum, was to be utilized towards the rent for the suit premises. Mr.Pavaskar submits that both Satyanarayan as well as his sister Ramdulari deposed to this fact. Such deposition was not demolished in the course of cross-examination. Mr.Pavaskar submits

that since the parties were related, it cannot be said that such a defense was either impossible or implausible. Mr.Pavaskar submits that in these circumstances, the ground of default in payment of rent cannot be said to have been established or proved. The findings recorded by the two Courts are vitiated by perversity and warrants interference under Article 227 of the Constitution of India.

5. Mr.Pavaskar, further points out that the eviction petition instituted by Ramprasad was not maintainable, since, Ramprasad was not the sole owner of the suit premises and consequently could not claim to be a sole landlord competent to maintain proceedings for eviction. Mr.Pavaskar submits that this is a point which goes to the root of the jurisdiction and on the same basis the impugned judgments and decrees are liable to be set aside.

6. Mr.Yogesh Thorat, the learned counsel for the respondent No.3 submits that this is a case of record of concurrent findings of facts. There is absolutely no perversity demonstrated and therefore, this Court, may not in the exercise of extra ordinary jurisdiction under Article 227, interfere with the concurrent findings of fact.

7. Mr.Thorat submits that the tenant Satyanarayan in the present case upon receipt of statutory notice under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Control Act) addressed a reply to the landlord Ramprasad. In the reply, there was no mention of any alleged payment to Ramdulari and some alleged agreement for adjustment of the said amount towards arrears of rent. A vague statement was made to the effect that there were no arrears. A dispute was also purported to be raised to the effect that the rent was Rs.13/- per month and not Rs.20.36/- per month. Mr.Thorat submits that the two Courts have rightly disbelieved the defense of Satyanarayan as being false and in the nature of an after thought. Mr.Thorat further submits that the Ramdulari, being a sister of Satyanarayan, was interested witness. In any case, even the Ramdulari, in her evidence, has admitted that the suit premises do not form part of the subject matter in a partition suit concerning the joint properties of Ramprasad and Shitala Prasad. Mr.Thorat submits that it is clear that this Shitala Prasad had no interest in the suit premises of the alleged payment of Rs.2,500/- to Shitala Prasad's wife Ramdulari has no nexus whatsoever in the rent in respect of the suit premises.

8. Rival contentions now fall for my determination.

9. This is a case of concurrent findings of fact. There is no perversity demonstrated in the record of such concurrent findings. Accordingly, it is not possible to interfere with such concurrent findings of facts in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

10. In this case, Satyanarayan had admittedly received a statutory notice under Section 12 of the Rent Control Act. Further, Satyanarayan had admittedly addressed a reply to Ramprasad Tiwari upon receipt of the statutory notice. In the reply, there is not even a whisper of any payment to his sister Ramdulari or the agreement for adjustment of such amount towards rents in respect of the suit premises. If there was any grain of truth in the defense raised, it is reasonable to proceed on the basis that such defense would have been raised at the earliest instance in response to the statutory notice. The two Courts have rightly, in such circumstances, held that the defense is neither established nor plausible. The two Courts have held that such defense is in the nature of an after thought upon which no reliance can be placed.

11. The defense is further premised on the basis that the suit premises were co-owned by Ramprasad Tiwari and his brother

Shitala Prasad Tiwari. Ramdulari, Shital Prasad's wife and Satyanarayan's sister in her deposition has however, admitted that the suit Chawl in which the suit premises are situated was not included in the suit for partition pending before the City Civil Court. This is what Ramdulari said in her deposition:

“A Suit is filed in City Civil Court against the Plaintiff for the partition of the property as well as for the accounts. Receiver has been appointed in respect of the suit property. I being illiterate, I have forgotten that the suit chawl is not included in City Civil Court because the land belongs to Corporation and therefore it has not been included in the partition suit. I had instructed my advocate afterwards about this position.”

12. This aspect has been considered in some details by the Small Causes Court in paragraph Nos.5 to 7 in its judgment and decree dated 28th November 1989. Such deposition on the part of Ramdulari does, make a severe dent to the defense raised by Satyanarayan, which defense, even otherwise, Satyanarayan was not successful in establishing.

13. There is no merit in the submission that Ramprasad was not competent to institute the eviction proceedings because he was

only the co-owner in respect of the suit premises. Apart from such a contention being legally untenable, the deposition of Ramdulari, is itself sufficient to reject such contention. There is difference between the concept of the landlord for the purposes of Rent Control Act and the owner or the Co-owner for the purposes of the general Law. In this case, there is material on record to indicate that rents were being paid to Ramprasad and even receipts were being issued by Ramprasad. That apart, even one of the co-owners is competent to maintain proceedings for eviction. Accordingly, on the basis of such defense, the impugned judgment and decrees warrant no interference.

14. With the aforesaid reasons, this petition is required to be dismissed and it is hereby dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)