

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.662 OF 2015

Shri Dnyaneshwar Dhondiba Jadhav	... Applicant
v/s	
Harishchandra Gopal Parab and others	... Respondents

WITH
CIVIL REVISION APPLICATION NO.150 OF 2016

Jagannath Kashiram Shirke	... Applicant
v/s	
Harishchandra Gopal Parab and others	... Respondents

Mr Rajesh B. Parab for Applicant in CRA No.662 of 2015.
Mr Pradeep J. Thorat for Respondent Nos.2 to 5 in CRA Nos.662 of 2015 and 150 of 2016.
Mr Madhur S. Surana for Applicant in CRA No.150 of 2016.

CORAM : B.P. COLABAWALLA, J.

DATE : JUNE 8, 2017

P.C.:

1. Both these Civil Revision Applications have been filed by the tenant and the sub-tenant respectively. Civil Revision Application No.150 of 2016 has been filed by the original tenant and Civil Revision application No.662 of 2015 has been filed by the sub-tenant.

It is common ground before me that the outcome of Civil revision Application No.150 of 2016 will also govern the outcome of Civil Revision Application No.662 of 2015. It is in these facts that I have heard the learned counsel for the respective parties.

2. For the sake of convenience, I shall refer to the facts in Civil Revision Application No.150 of 2016. In this Civil Revision Application, the Applicant who was original Defendant No.1 before the Trial Court, seeks quashing of the judgment and decree dated 21st July 2015 passed by the Appellate Bench of the Small Causes Court in A-1 Appeal No.338 of 2007 in RAE & R Suit No.1717 of 2001. By the impugned order, the Appellate Bench of the Small Causes Court allowed the Appeal and decreed the Suit filed by the original Plaintiff / landlord. In addition thereto, the Appellate Bench directed the Defendants to deliver vacant possession of the suit premises situated at Sion Chunabhatti, Mumbai 400 022 to the Plaintiffs within a period of three months from the date of the order.

3. The brief facts giving rise to the present controversy are as follows :-

The Applicant is the original Defendant No.1 and the Respondents in the Civil Revision Application are the original Plaintiffs in RAE & R Suit No.1717 of 2001. This Suit has been filed against the Applicant herein as well as Respondent No.6 (the sub-tenant) for possession of the suit premises under the provisions of the Maharashtra Rent Control Act 1999 (hereinafter referred to as the Act). For the sake of convenience, I shall refer to the parties as they were arrayed before the Trial Court.

4. It is common ground before me that the Plaintiffs (Respondent Nos.1 to 5 herein) are owners of the chawls situated at C.T.S. No.305, Near Muktadevi Temple, Hill Road, Sion Chunabhatti, Mumbai 400 022. The Plaintiffs in the Suit claim that they are the owners and landlords of Room No.4, admeasuring 12' x 12' situated at Chawl No.62-A, Rukmini Parab Chawl, Near Muktadevi Temple, Hill Road, Sion Chunabhatti, Mumbai 400 022 (hereinafter referred to as the suit premises) and that Defendant No.1 was their tenant in respect of the suit premises.

5. According to Defendant No.1, there were no basic amenities provided to the slum dwellers residing in the said Chawls and therefore, the Competent Authority under the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act 1971 (for short, Slum Act), after following the procedure, by an order dated 30th June 1978 declared the said C.T.S. Nos.305, 305/1 to 20 of Village Kurla, M.S.D. as a slum under section 4 of the Slum act. A Notification to that effect was also published in the Government Gazette on 31st June 1978.

6. It is the case of Defendant No.1 that he were paying monthly rent regularly but despite this, the Plaintiffs filed R.A.E. Suit No.182/385 of 1992 in the Small Causes Court against the Defendant No.1 for possession of the suit premises. However, in the said Suit, Chawl number was mentioned as 62-B instead of 62-A. The grounds on which the said Suit was filed was that the Defendant No.1 (Applicant in this Civil Revision Application) had not paid rent for more than six months and he had committed an act contrary to clause (o) of section 108 of the Transfer of Property Act 1882. Additionally, it was alleged that Defendant No.1 had carried out repairs /

alterations in the suit premises and that in any event the Plaintiff required the suit premises for his bonafide requirement. Accordingly, eviction and possession were claimed for in this Suit. Respondent No.6 (the sub-tenant) was not a party to this Suit.

7. This Suit was resisted by Defendant No.1 by filing his written statement and denying the contentions raised by the Plaintiff. On these pleadings, the learned Judge of the Small Causes Court, Mumbai framed as many as 13 issues and after allowing both the parties to lead oral and documentary evidence and hearing the arguments, by a judgment and order dated 24th August 2001, partly allowed the Plaintiff's R.A.E. Suit No.182/385 of 1992 for payment of rent alongwith interest. However, the said Suit was dismissed as far as eviction and possession of the suit premises were concerned. The Trial Court refused possession on the ground that the Suit was not maintainable in view of the provisions of section 22 of the Slum Act which contemplates prior permission of the Competent Authority being obtained before filing any Suit for eviction of an occupier in a building on a land in a slum area.

8. In view thereof, the Plaintiff thereafter obtained permission of the Competent Authority as contemplated under section 22 of the Slum Act and thereafter filed R.A.E. Suit No.1717 of 2001 (hereinafter referred to as “the second Suit”). In the second Suit, the Plaintiff also joined the sub-tenant as Defendant No.2. In the second Suit, the Plaintiff sought possession of the suit premises on the ground that Defendant No.1 had unlawfully parted with possession of the suit premises to Defendant No.2; that Defendant No.1 had carried out repairs / alterations and that the conduct of the Defendant No.1 was amounting to nuisance and annoyance. On all the aforesaid grounds, the Plaintiff sought eviction of both the Defendants.

9. The second Suit also was contested by both the Defendants on various grounds by filing their respective written statements. Thereafter, on the pleadings before the Trial Court, the learned Judge of the Small Causes Court, Mumbai framed eight issues and allowed both the parties to lead oral as well as documentary evidence. After hearing the parties, the learned Judge by his judgment and order dated 18th December 2006 was pleased to dismiss the Suit of the Plaintiff inter alia holding that the Plaintiff has failed

to prove that they were owners and landlords of the suit property or that they had unlawfully parted with possession of the suit premises. The learned Judge further held that the second Suit was barred on the principles of estoppel and res judicata.

10. Being aggrieved by this decision, the Plaintiff preferred Appeal No.338 of 2007 before the Appellate Bench of the Small Causes Court, Mumbai. When the Appeal reached for final hearing, all parties were heard and the Appellate Bench by judgment and order dated 21st July 2015, allowed the Appeal filed by the Plaintiff and passed a decree for possession in R.A.E. Suit No.1717 of 2001. This decree was passed on the ground that Defendant No.1 had sublet the suit premises to Defendant No.2. Being aggrieved by this judgment and order of the Appellate Bench that Defendant No.1 has filed the present Civil Revision Application (Civil Revision Application No.150 of 2016). Similarly, Defendant No.2 has also filed Civil Revision Application No.662 of 2015 assailing the same judgment and order of the Appellate Bench.

11. In this factual backdrop, Mr Surana, learned counsel

appearing on behalf of Defendant No.1, submitted that there was clearly an error of law apparent on the face of the record in passing the impugned judgment and decree dated 21st July 2015. He submitted that in the facts of the present case, the Plaintiffs had first filed RAE Suit No.182/385 of 1992 for exactly the same reliefs. In fact, the issues framed in both the Suits were almost identical. The first Suit was heard by the Small Causes Court and a decree for possession was refused even though a finding was given in the affirmative that the Defendant No.1 has sublet the premises. He therefore submitted that second Suit itself was hit by the principles of estoppel and res judicata and was not maintainable. This finding in subsequent RAE Suit No.1717 of 2001 (the second Suit) was perfectly correct and the Appellate Bench was in grave error in interfering with those findings and conclusions. He therefore submitted that on this ground alone, this Court ought to interfere with the order passed by the Appellate Bench. Despite several other grounds being raised in the Civil Revision Application, Mr Surana very fairly did not press any other ground.

12. On the other hand, Mr Thorat, learned counsel appearing

on behalf of the Plaintiffs, sought to support the impugned judgment and decree passed by the Appellate Bench of the Small Causes Court. He submitted that in the facts of the present case, there was no question of either estoppel or principles of res judicata being applied for the simple reason that the first Suit was held to be not maintainable by virtue of the fact that there was no permission granted by the Competent Authority under section 22 of the Slum Act. It is in this light that the Small Causes Court held that the first Suit filed by the Plaintiffs was not maintainable. Thereafter, the Plaintiffs approached the Competent Authority and obtained the permission under section 22 of the Slum Act. It is only thereafter that subsequently the second Suit was filed by the Plaintiffs seeking eviction of the Defendants and possession of the suit premises. He submitted that on these issues, the learned Appellate Bench has given findings and conclusions in paragraphs 29 to 35 of the impugned judgment and decree. Apart from contending that these findings and conclusions are perfectly justified in the facts of the present case, by no stretch of the imagination can they be termed as perverse or indicating any error apparent on the face of the record, was the submission of Mr Thorat. He therefore submitted that there was no

merit in the Civil Revision Applications and the same ought to be dismissed.

13. I have heard the learned counsel for the parties at length and perused the papers and proceedings in both the Civil Revision Applications as well as the orders passed by the Small Causes Court, Mumbai as well as the Appellate Bench. In the first Suit filed by the Plaintiffs (RAE Suit No.182/385 of 1992) the Trial Court framed as many as 13 issues. Issue No.7 that was framed by the Trial Court was whether the Plaintiffs prove that the Defendants had illegally sublet the premises. This issue was answered in the affirmative and in favour of the Plaintiffs. Thereafter, issue No.9 that was framed was whether the Suit was maintainable in law. The finding given with reference to this issue was it was maintainable only to the extent of arrears of rent. The reasoning on this issue by the Trial Court in the first Suit can be found in paragraphs 7 to 15 of its decision dated 23rd August 2001. The Trial Court basically held that since no prior permission was obtained from the Competent Authority under section 22 of the Slum Act, no decree for eviction from the suit premises could be granted.

14. Thereafter, the Plaintiffs filed the second Suit i.e. RAE Suit No.1717 of 2001. In this Suit, he also joined the sub-tenant as Defendant No.2. The Trial Court dismissed the Suit inter alia on the ground that there was no subletting; that the Plaintiffs had failed to prove that they were the landlords / owners in respect of the suit premises; that the Suit was not maintainable in view of the provisions of the Slum Act; and the Suit was hit by the principles of estoppel and res judicata. This order was assailed before the Appellate Bench. The Appellate Bench, on the pleadings before it, framed eight issues which are as under :-

Sr.No.	Points	Findings
1	Whether the suit is maintainable in view of section 22 of the Slums Act ?	Yes
2	Whether the suit is barred by principles of res judicata and estoppel ?	No.
3	Do the plaintiffs prove that defendant No.1 has sublet the suit premises to defendant No.2 in violation of section 16(1)(e) of the Maharashtra Rent Control Act 1999 ?	Yes
4	Do the plaintiffs prove that the defendants have carried out material additions and alterations in the suit premises of permanent nature without written permission of the plaintiffs / landlord ?	No
5	Whether the defendants have been causing nuisance and annoyance to adjoining occupants of the suit premises ?	No
6	Whether the plaintiffs are entitled for possession of the suit premises ?	Yes

7	Whether the impugned judgment and decree call for any interference ?	Yes
8	What order ?	The appeal is allowed.

14. As far as I am concerned, the only point pressed before me was Issue No.2 before the Appellate Bench viz. Whether the Suit is barred by principles of res judicata and estoppel ? The finding on this issue has been considered in detail by the Appellate Bench from paragraphs 29 to 35 of the impugned judgment and order. On the reasoning given by the Appellate Bench, I find that it was fully justified in holding that the second Suit filed by the Plaintiffs was not barred by the principles of res judicata / estoppel as contended by the Defendants. I find that the Appellate Bench has correctly applies its mind to the aforesaid issue and given proper and cogent reasons to come to the conclusion that it has. Even otherwise, I am independently satisfied that this argument has no merit. As mentioned earlier, in the facts of the present case, the first Suit qua possession and eviction of the suit premises. was dismissed on the ground that the same was not maintainable by virtue of the fact that no prior permission was obtained of the Competent Authority under section 22 of the Slum Act before filing the said Suit. It therefore

held that the Suit was incompetent and it had no jurisdiction to entertain the said Suit in so far as it sought a decree for eviction and possession of the suit premises.

16. After obtaining permission as contemplated under section 22 of the Slum Act, the Plaintiffs filed the second Suit. It was only after obtaining the permission, the Small Causes Court got jurisdiction to entertain and try the Suit filed by the Plaintiffs, in so far as it sought the relief of eviction and possession of the suit premises. This being the case, I am clearly of the view that the principles of res judicata and estoppel could never be attracted to the facts of the present case.

17. I find that the Appellate Bench of the Small Causes Court has also correctly appreciated all the facts and come to a finding that the Defendant No.1 had sublet the suit premises to the Defendant No.2. It has come to this factual finding after examining the evidence led by the parties and especially arguments advanced in that behalf by Defendant No.2.

18. For all the aforesaid reasons, I find no merit in the Civil Revision Application and the same is accordingly dismissed.

19. As far as Civil Revision Application No.662 of 2015 is concerned, it is common ground before me that the facts are identical and the points to be canvassed also are identical. In fact, the learned counsel appearing on behalf of the Applicants in CRA No.662 of 2015 has clearly stated that the outcome of CRA No.150 of 2016 will govern the outcome of CRA No.662 of 2015.

20. In view of my findings and conclusions in CRA No.150 of 2016, CRA No.662 of 2015 is also dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P. COLABAWALLA, J.)