

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 35 OF 2018

Pahelraj s/o Chandumal Shindhi
Age 60 years, occup. Business,
R/o Nanaknagar, Shindhi Colony,
Bhusawal, Dist. Jalgaon

.. Petitioner/Orig.
Orig. Plaintiff

versus

Sham s/o Chandumal Shindhi
Age 35 years, Occup. Business,
R/o Nanaknagar, Shindhi Colony,
Bhusawal, Dist. Jalgaon

.. Respondent/
Orig. Defendant

Mr. B. R. Kedar, Advocate for petitioner
Mr. P. R. Katneshwarkar, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 5th March, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.
2. The parties inter-se are real brothers. The applicant and respondent are hereinafter being referred to by their original status before trial court i.e. applicant as Plaintiff and respondent as Defendant.
3. Plaintiff had initiated litigation under proceedings bearing regular civil suit no. 138 of 2002 in the court of civil judge,

junior division, Bhusawal against defendant - his brother for possession and recovery of rent in respect of house and landed properties bearing municipal house no. 541 and municipal house no. 930 (old number 6130) situated at Shindhi Colony, Bhusawal.

4. It is claimed by plaintiff that from aforesaid property, an area of 15 ft. x 15 ft. had been rented out to defendant at the rate of Rs.1000/- per month plus taxes to be borne by him. Defendant had defaulted payment of rent and taxes since 1999. Plaintiff claims that he requires the property *bonafide* for running business and that defendant has other properties available. Plaintiff had issued notice terminating tenancy of defendant and, as such, aforesaid suit ensued for possession and recovery of rent.

5. Defendant denied the claims made in the plaint. He denied municipal house number and description of property. He denied landlord-tenant relationship between the two and contended that there is no question of any default in payment of rent. It is further denied that the plaintiff requires suit premises *bonafide* for business and has denied that any alternate place is available to him. He contended that notice by plaintiff had been replied properly by defendant. Defendant has further referred to

that there have been earlier attempts by plaintiff claiming possession giving different numbers of properties. It is contended that plaintiff does not have proper knowledge about the property and correct position. Plaintiff is in the habit of issuing notices and giving improper information and changing stands and advocates.

6. Defendant claims that he is in possession of separate property bearing municipal house no. 930/1 and contends, plaintiff is bent upon taking possession of the same from defendant.

7. Trial court had framed issues as to whether plaintiff proves ownership over suit property, whether defendant is tenant in suit property, whether defendant has alternate accommodation available and also about hardship, and whether plaintiff is entitled to reliefs claimed.

8. Trial court found the plaintiff to have proved his ownership and the defendant being tenant had defaulted payment of rent and further defendant having alternate accommodation and as such had decreed the suit under judgment and decree dated 12-10-2010.

9. Defendants, aggrieved by said judgment and decree, had been in regular civil appeal bearing no. 270 of 2014 (old 177 of 2010). Appellate court had framed points for determination as to whether the plaintiff could prove default had been committed by defendant and whether the plaintiff is entitled to decree of possession and arrears of rent and vide judgment delivered on 25-11-2014 considered that the plaintiff was not entitled to decree of possession and arrears of rent as he could not prove defendant being tenant and defaulter.

10. Learned counsel Mr. Kedar for plaintiff submits that, there is ample evidence showing that initially plaintiff had been allotted property bearing no. 541 and had subsequently been granted property admeasuring 977 on the northern side of property no. 541. It is in that northern portion defendant had been allowed entry as tenant over an area admeasuring 15 ft. x 15 ft. and the relationship is being misused and plaintiff is being defrauded.

11. Learned counsel Mr. Kedar appearing on behalf of the plaintiff - applicant contends that appellate court has committed grave error in considering that the properties bearing no. 930 and 930/1 are separate properties. According to instructions of learned counsel, as a matter of fact, property bearing no. 930/1

is a property subsequently carved out from no. 930, upon an application by defendant to municipal council. Plaintiff had not been given notice about such separation of his property.

12. He submits defendant had not entered witness box and had simply relied on certified copy issued by revenue authority. He submits, besides certified copy issued by revenue authority, there is nothing placed on record by defendant to show that there is segregation of property bearing no.930 into two, bearing numbers 930 and 930/1 and that property bearing no. 930/1 is indeed a separate property having no nexus with property bearing number 930.

13. He further submits that the appellate court had committed error in relying on answers being given by plaintiff in response to questions in exclusion of the context in which they were asked and has appreciated the same as admissions. He submits that even if answers given by plaintiff are not admissions and even otherwise, those are unlikely to change position that the property no. 930/1 is part and parcel of property allotted to plaintiff bearing no. 930 which ought not to be divided and given numbers 930 and 931. Document in respect of property bearing no. 930/1 has been fraudulently obtained by defendant.

14. Learned counsel further submits that while suit had been filed for eviction on the ground of default and *bonafide* requirement, no point absolutely had been framed by appellate court in respect of *bonafide* requirement, alternate accommodation and hardship. Appellate court has also failed to frame point with regard to ownership of property which had been specifically framed and dwelt upon by trial court. He, therefore, urges to allow civil revision application and restore decision of trial court, setting aside appellate court's decision.

15. Mr. Katneshwarkar, on the other hand, counters the submissions on behalf of the plaintiff, stating that in the face of admitted position and observations by appellate court, it is indeed borne out that properties bearing numbers 930 and 930/1 are two separate properties, especially when the plaintiff accepts the position that defendant is owner of municipal house bearing no. 930/1. He submits that the appellate court has rightly appreciated that there are no rent receipts and plaintiff has no document to show that defendant is tenant in respect of house no. 541. Admissions in this respect by the plaintiff have been rightly considered and appreciated and decision has been correctly rendered by appellate court, requiring no interference in revisional powers of this court.

16. Having heard learned counsel as aforesaid, it may have to be noted that appellate court although has set aside decision rendered by trial court, it has found that northern open space adjoining property bearing no. 541 had been allotted to plaintiff and has further considered, it is plaintiff's case that defendant is tenant in respect of said adjoining area. Defendant has filed extract from revenue department in respect of property number 930/1 referring to defendant as owner. Appellate court, as such, has considered that the plaintiff is owner of house property bearing no. 930 whereas defendant is owner of adjoining property under no. 930/1.

17. Although one may perceive that there are properties bearing numbers 930 and 930/1 and, as such, are separate properties, yet the genesis of generation of these properties would throw proper light on the factual aspects and that would go a long way facilitating decision on claims on either side, whether property number 930/1 is carved out from property no. 930 or all along it has been a separate property. Whether after allotments have been made to the plaintiff, defendant has acquired property bearing no. 930/1 and/or the procedure adopted for such allotment. All these aspects may go to the root of the matter and will have to be decided, if necessary, by giving opportunity to the parties to adduce further evidence.

18. As such, impugned judgment and order passed by the appellate court on 25-11-2014 in regular civil appeal no. 270 of 2014 is set aside. The appeal is restored to its position as had been subsisting immediately before impugned decision had been rendered by appellate court. The appellate court shall decide the appeal by framing proper points for determination, if necessary letting the parties opportunity to lead evidence. The appellate court to decide the matter afresh objectively without getting bogged down or influenced by the remand of the matter and shall objectively assess the evidence.

19. Rule made absolutely in aforesaid terms.

20. Civil revision application is accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-