

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST.) NO.9237 OF 2018

Surekha Dnyaneshwar Jathade ... Applicant
Vs.
Gopabai Ramchandra Raut through POA Holder
Shivaji @ Aba Ramchandra Raut and another ... Respondents

Mr. M. U. Rajput for Applicant.

CORAM : R. G. KETKAR, J.
DATE : MARCH 27, 2018

P.C. :

Heard Mr. Rajput, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant No.1', has challenged the judgment and decree dated 26.03.2012 passed by the learned 10th Joint Civil Judge, Junior Division at Solapur in R.C.S.No.695 of 2008 as also the judgment and decree dated 15.01.2018 passed by the learned Principal District Judge, Solapur in Regular Civil Appeal No.226 of 2012. By these orders, the Courts below decreed the Suit instituted by the respondent No.1, hereinafter referred to as 'plaintiff', under Sections 16(1)(g) and 16(1)(e) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The Courts below also held that greater hardship will be caused to the plaintiff in case decree of eviction is refused.

3. In support of this Application, Mr. Rajput strenuously contended that merely on the basis of documents at exhibits-62, 63, 66, 67 and 74 to 77 and oral evidence of P.W.2-Ramchandra and P.W.3-Sidram, the Courts below held that suit property belongs to the plaintiff. He further

submitted that respondent No.2, hereinafter referred to as 'defendant No.2', is a real brother of defendant No.1. Defendant No.2 cheated defendant No.1. Defendant No.1 was totally unaware of the proceedings in the trial Court. In fact, defendant No.1 has filed complaint against defendant No.2 with Bar Council of Maharashtra and Goa as also President, Bar Association, Solapur on 21.03.2018. In the complaint, defendant No.1 has specifically alleged that defendant No.2 did not permit her to go through the papers and proceedings of the Suit as also did not explain seriousness of the proceedings in the trial Court. Defendant No.2 obtained her signatures to grab the suit property. He submitted that as defendant No.1 was not made aware of the proceedings, the impugned orders may be set aside and the Suit may be remitted to the trial Court for deciding it afresh.

4. He further submitted that in the plaint, plaintiff has alleged that the cause of action accrued to her in the year 2003 and the Suit is instituted in the year 2008. As the period of limitation is 3 years from the date of accrual of cause of action, the Courts below ought to have dismissed the Suit on the ground that it is barred by limitation. He, therefore, submitted that the Application requires consideration.

5. I have considered the submissions advanced by Mr. Rajput. I have also perused the material on record. A perusal of the material on record and in particular the order passed by the learned District Judge shows that defendant No.1 filed her written statement. She however did not enter into witness box. Defendant No.2 claimed title to the suit premises through deceased Ramchandra on the basis of the document dated 17.03.1985, which was never produced by him. Defendant No.2 is a practising Advocate. In paragraph 21, the appellate Court dealt with the documentary evidence as also the oral evidence adduced by the

plaintiff and held that the suit premises was initially recorded in the name of Ramchandra and thereafter in the name of the plaintiff. At no point of time, the said entry was challenged by anybody much less, by defendant No.2. Evidence on record at least shows that the suit premises was owned by the husband of the plaintiff and the said fact was not challenged. After perusing the material on record, I do not find that the Courts below committed any error.

6. Mr. Rajput submitted that the Suit was barred by limitation as it ought to have been instituted within 3 years from the date of accrual of cause of action. The cause of action accrued in the year 2003 and the Suit was instituted in the year 2008. The period of limitation is prescribed under Article 67 of the Limitation Act, 1963, which is 12 years. Apart from that, the said contention was also not agitated before the Courts below. In view thereof, I do not find any merit in this submission.

7. Mr. Rajput submitted that in paragraph 27, the learned District Judge observed that the findings recorded by the learned trial Judge in respect of provisions of Benami Transactions (Prohibition) Act, 1988 (for short 'Benami Act') was beyond the scope of the Rent Court, and therefore, that was set aside. I do not find any merit in this submission. A perusal of the trial Court's order, and in particular paragraphs 34 and 35 shows that the learned trial Judge has rightly dealt with the submissions advanced on the basis of the provisions of the Benami Act. The learned trial Judge observed Section 4 prohibits right to recover property held *Benami*. As per Section 4, no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held, or against any other person, shall lie by or on behalf of a person claiming to be the real owner of

such property. If the parties have advanced their submissions based on the provisions of the Benami Act, the learned trial Judge was justified in dealing with these submissions. Section 35 of the Act lays down that nothing contained in Sections 33 and 34 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises. In short, in a limited jurisdiction, incidentally, the Rent Court can go into the question of title. At the same time, Legislature has taken care by incorporating Section 35. In view thereof, the findings of the learned District Judge in paragraph 27 shall stand deleted from the impugned order. Subject to this modification, no case is made out for interfering with the impugned order. Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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