

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.317 OF 2017

Rajaram Gangadhar Gujar	]	Applicant
Vs.		
Mary Ivan Creado and others	]	Respondents

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Mr. D. Banerjee i/b Rishil Aiya, for Applicant.
Mr. R.D. Mishra, for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 5TH OCTOBER, 2018.

P.C:

Heard Mr. Banerjee, learned Counsel for the applicant and Mr. Mishra, learned Counsel for the respondents at length.

2. By this C.R.A filed under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as "defendant" has challenged the judgment and decree dated 3rd May, 2014 passed by the learned Judge, Court Room No.20 of the Court of Small Causes at Mumbai in R.A.E & R Suit No. 552 of 1987 as also the judgment and decree dated 22nd March, 2017 passed by the Appellate Bench of the Court of Small Causes at Mumbai in 2(a) Appeal No. 297 of 2014. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as "plaintiffs" under section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. Rule. Mr. Mishra waives service. Having regard to the narrow controversy raised in this Application as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. The defendant has earlier instituted Writ Petition No. 104 of 2014 in this Court. That Petition was disposed of on 8th January, 2014. In paragraph 5 of that order, contention of the defendant that Ms. Philomena Alfred D'Mello and others entered into an agreement of sale in favour of Datta Kripa Rahiwashi Mandal Co-operative Housing Society (for short 'Society') on 16th March, 2017 and agreed to sell a piece of land admeasuring 967.4 square meters, Survey No. 248 (Part) C.T.S No.797 together with 3 chawls consisting of 68 structures thereon was noted. It was observed that the Courts below did not deal with this point at all. In view thereof, the judgment and decree dated 30th October, 2002 passed by the learned trial Judge in R.A.E & R Suit No. 552 of 1987 as also the judgment and decree dated 10th October, 2013 passed by the Appellate Bench in Appeal No. 155 of 2003 were set aside and the suit was restored to the file of the trial Court for deciding it afresh.

5. A perusal of the Appellate Court judgment shows that the Appellate Court has not adverted to this aspect at all. In paragraph 10, the Appellate Court noted the submission of the defendant that Conveyance Deed was executed by Titus Alfred D'Mello and others in favour of the Society. The Appellate Court, however, after remand did not deal with this aspect at all.

6. In view thereof, Mr. Mishra submits that by consent of the plaintiffs, impugned order may be set aside and the Appeal may be restored to the file of the Appellate Court for deciding it afresh.

7. In view thereof, by consent of the parties, order dated 22nd March, 2017 passed by the Appellate Court in 2(a) Appeal No.297 of 2014 is set aside. 2(a) Appeal No.297 of 2014 is restored to the file of the Appellate Court. The Appellate Court will deal with contention of the defendant based upon the fact that he is member of the society and agreement of sale dated 16th March, 1987 and deed of Conveyance dated 9th August, 1994 were executed by Titus Alfred D'Mello and others in favour of the Society and shall record finding on this aspect.

8. Learned Counsel for the parties assure that they will appear before the Appellate Court on 15th October, 2018 and for that purpose, no fresh notice be issued. The Appellate Court will fix a suitable date and thereafter proceed to dispose of the appeal within a period of three months from the date so fixed. All contentions of the parties are expressly kept open. Rule is made absolute with no order as to costs.

9. Office to transmit Record and Proceeding to the Small Causes Court Mumbai forthwith.

[R.G. KETKAR, J.]