

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application (ST) NO. 14496 OF 2018

Mr. Rajaram Yekhe (since Deceased)
Through LRs.

Mrs. Mohini Rajaram Yekhe & others.

...Applicants

Versus

Ramchandra Hiranmanji Tawde (since deceased)
Through LRs.

Shevanti Wd/O. Ramchandra Tawade
(deleted since deceased) and others.

...Respondents

....

Mr. Santosh M. Suryawanshi, Advocate for the applicants.

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CORAM : R. G. KETKAR, J.

DATE : 30th JULY, 2018

P.C.

1. Heard Mr.Santosh M. Suryawanshi, learned counsel for the applicants, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, who are the heirs and legal representatives of Rajaram Yekhe, hereinafter referred to as the 'defendants', have challenged the judgment and decree dated 30.1.2012 passed by the learned Judge, Court Room No.36 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. & R. Suit

No.275/2005 as also the judgment and decree dated 3.4.2018 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai in Appeal (A-1) No.30/2012. By these orders, the Courts below have allowed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs', under Sections 15, 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The Courts below held that the plaintiffs established that the defendants are his tenants and there is relationship of landlord and tenant between the parties; the plaintiffs proved that inspite of service of legal and valid demand notice dated 30.11.2004 to the defendants, the defendants failed and neglected to pay the rent to the plaintiffs and thus the plaintiffs have established the ground under Section 15 of the Act. The Courts below also held that the plaintiffs proved that they require the suit premises reasonably and bonafide as contemplated under Section 16(1)(g) of the Act and that greater hardship will be caused to them by refusing to pass eviction decree. The Courts below also turned down the objection raised by the defendants about maintainability of the suit on the ground of non-obtaining prior written permission of the Competent Authority under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (for short, 'Slum Act'). The Courts below also held that the Small Causes Court has jurisdiction to entertain

and try the suit notwithstanding declaration dated 14.7.1988 (and not Government Gazette 31.3.1983).

3. In support of this application, Mr. Suryawanshi strenuously contended that the Courts below committed serious error in decreeing the suit instituted by the plaintiffs. He submitted that basically the suit premises, namely, room No.9 admeasuring 10 ft. x 15 ft. situate at Deepak Chawl, Hemukalani Road No.3, Iraniwadi, Kandivali (West), Mumbai – 400 067 (for short, 'suit premises' and 'Deepak Chawl' hereinafter referred to as the 'suit building') is situate in a slum area declared under Section 4 of the Slum Act. He submitted that the plaintiffs and the defendants are held eligible for rehabilitation. The names of the plaintiffs and the defendants are included in Annexure-II. Name of defendant No.1 is at Sr. No.73. The developer has entered into an agreement with the defendants in the year 2011. S.R.A. project is completed and flat No.207 was allotted to the slum dwellers. The defendants received possession of flat No.207 from M/s. Sai Krupa Developers under SRA scheme.

4. Mr. Suryawanshi further submitted that during pendency of the appeal, the defendants filed applications at Exhibits-17, 28 and 38 under Order XLI Rule 27 of C.P.C. for adducing additional evidence.

Though all those applications were allowed by the Appellate Court, the Appellate Court has not properly considered the documents produced by the defendants and erroneously came to the conclusion that the suit building is not included in C.T.S. No.187. He has taken me through the impugned order as also application Exhibit-17 filed by the defendants enclosing therewith (i) Annexure-II, (ii) application Exhibit-28 enclosing therewith development agreement dated 13.10.2011, and (iii) the letter issued by the society declaring that defendant No.1 is the successful allottee in the lottery. He, therefore, submitted that as the suit premises is basically situate in an area which is declared as a slum area, the suit instituted by the plaintiffs itself was not maintainable and consequently the Courts below were not justified in passing the eviction decree. He, therefore, submitted that the application requires consideration.

5. I have considered the submissions advanced by Mr. Suryawanshi. I have also perused the material on record. Insofar as merits of the case are concerned, after appreciating the evidence on record the Courts below have decreed the suit under Sections 15 and 16(1)(g) of th Act. Insofar as the ground under Section 15 is concerned, the learned trial Judge has considered this issue in paragraphs-27 to 29. The learned trial Judge observed that despite

service of demand notice dated 30.10.2004 on the defendants, they failed and neglected to pay the rent to the plaintiffs. The defendants were in arrears of rent from 1.9.2004 till 31.10.2004 and were not ready and willing to pay the arrears. The plaintiffs had produced on record copy of the notice at Exhibit-44 which was sent through R.P.A.D. and Under Certificate of Posting (UPC). The defendants came with the case that the demand notice was not served on them. After considering the endorsement made by the postal authorities on the envelope “unclaimed”, the learned trial Judge concluded that the demand notice was duly served.

6. Insofar as the grounds of reasonable and bonafide requirement as also comparative hardship is concerned, the same was considered by the learned trial Judge in paragraph-32. The learned trial Judge considered the case of the plaintiffs that they are residing in room No.3 admeasuring 6 sq. ft. x 6 sq. ft. and they are in all nine members. After considering the evidence on record, namely, ration card as also the fact that the defendants have their own residential premises at Sai-Datta Sahakari Griha Sanstha Maryadit, situate at plot No.271, part-I, Sector 2, R.S.C. Charkop, Kandivali (West), Mumbai – 400 067. The learned trial Judge accepted the case of the plaintiffs that they require the suit premises reasonably and bonafide and that greater hardship

will be caused to them in the event of refusal to pass eviction decree.

7. The learned trial Judge considered the objection raised by the defendants as to maintainability of the suit on the ground that the suit premises situate in the suit building is declared as a slum area. The learned trial Judge considered this aspect in paragraph-33. After considering the evidence on record as also admission of defendant No.1 in cross-examination that she has no document to show that the suit premises is situate in C.T.S. No.187, the learned trial Judge observed that the documents relied upon by the defendants are of no use. No document was produced by the defendants to show that the suit premises is situate on C.T.S. No.187.

8. As far as the Appellate Court is concerned, the Appellate Court reappreciated the entire evidence on record including additional evidence produced by the defendants along with applications Exhibit-17, 28 and 38. The Appellate Court considered the ground under Section 15 from paragraphs-15 to 17. The Appellate Court confirmed the finding recorded by the learned trial Judge as regards service of demand notice as also that the defendants have failed and neglected to pay the arrears of rent. The Appellate Court also observed that there is nothing on record to show that the defendants have deposited the rent

in the Court.

9. Insofar as the ground under Section 16(1)(g) and hardship is concerned, the Appellate Court has considered this aspect in paragraphs-19 to 21 and upheld the findings recorded by the trial Judge. In paragraph-22, the Appellate Court dealt with the additional evidence produced by the defendants along with applications Exhibits-17, 28 and 38 under Order XL Rule 27 of C.P.C. The Appellate Court also observed that the defendants have not produced any document to show that the suit premises is situate on C.T.S. No.187 and the land on which suit building, namely, Deepak Chawl in which the suit premises is situate is declared as a slum. The defendants have not examined any witness from the concerned department to establish that the suit building is situate on C.T.S. No.187. The Appellate Court, therefore, concluded that the documents filed by the defendants are of no use to prove that the suit premises are declared as a slum. As the defendants failed to establish that the suit premises is situate on C.T.S. No.187, the question of obtaining permission to file present suit does not arise at all.

10. Mr. Suryawanshi reiterated the submissions that the defendants are found as eligible and their names are included in Annexure-II. The developer, namely, M/s. Sai Krupa Developers has

entered into an agreement with the defendants on 13.10.2011. The Appellate Court has rightly dealt with this aspect in paragraph-22. As basically the defendants failed to establish that the suit premises is situate in C.T.S. NO.187, which is declared as slum area, I do not find that the Courts below committed any error in holding that the suit is not barred in view of Section 22 of the Slum Act.

11. The defendants are not in a position to demonstrate that the findings recorded by the Courts are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)