

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.834 OF 2014

Jayram Hari Rahate (deceased)	]	
1(a) Ganga Nakul Bhusari & Ors.	]	Applicants
Vs.		
Shantilal Ravji Sojpal (deceased)	]	
1(a) Deepak Shantilal Ravji Sojpal & Ors.	]	Respondents

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Mr. P.J. Thorat, for Applicants.
 Mr. Pramod Y. Kulkarni, for Respondents No.3(a) and 3(b).
 Mr. Deepak J. Lulia, for Respondent No.6.

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CORAM : R.G. KETKAR, J.

DATE : 11TH JULY, 2018.

P.C:

Heard Mr. Thorat, learned Counsel for the applicant, Mr. Kulkarni, learned Counsel for respondents No.3(a) and 3(b) and Mr. Lulia, learned Counsel for respondent No.6 at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), applicants, hereinafter referred to as "plaintiffs" have challenged the judgment and decree dated 5th April, 2011 passed by the learned Judge, Court Room No.9 of the Court of Small Causes at Mumbai in R.A.D Suit No.128 of 1991 as also judgment and decree dated 23rd April, 2014 passed by the Appellate Bench of the Court of Small Causes at Mumbai in R. Appeal No.23 of 2011. By these orders, the Courts below dismissed the suit instituted by the plaintiffs for declaration that they are tenants of defendants No.1 and 2 in respect of Room No.2, Block-C, Ravji

Sojpal Chawl, 81/83, Rambhau Bhogale Marg, Ghodapdeo Road, Mumbai – 400 033 (for short 'suit premises'); for directing defendants No.1 and 2 to issue rent receipts in the name of the plaintiffs and for injunction restraining defendants No.3(a) to 3(c) from dispossessing the plaintiffs without due process of law from the suit premises or in any manner causing or creating obstacles, impediments or interference in plaintiffs' peaceful use, occupation and enjoyment of the suit premises.

3. In support of this application, Mr. Thorat submitted that admittedly the plaintiff was a tenant in respect of the suit premises. The landlord had instituted R.A.E Suit No.1235 of 1963 for recovery of possession invoking ground of arrears of rent. On 9th August, 1965, Consent Terms were entered into between the parties therein. Tenancy of the original plaintiff was continued subject to his payment of arrears of rent. As the plaintiff did not pay arrears of rent, execution proceedings were taken out by the landlord. Wife of the plaintiff obstructed execution proceedings and, therefore, landlord took out Obstructionist Notice No.365 of 1966 which was made absolute on 31st July, 1967. He contended that thereafter landlord transferred tenancy in favour of Kashinath Rahate, brother of Jayram Rahate, original plaintiff who is father of defendant No.3 Anant Rahate (since deceased). He submitted that the plaintiff and defendant No.3 are jointly in possession of the suit premises. In any case, the plaintiff is in possession of the suit premises prior to 1st February, 1973 and is, therefore, a protected tenant by virtue of section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). He submitted that defendant No.3 died on 20th April, 1987. Even otherwise, under section 5 (11) (c), the plaintiffs being heirs and legal representatives of original defendant No.3-Kashinath Rahate, their status as tenant continues and they are in possession of the suit premises. He submitted that no material is produced on record by the landlord to establish that decree passed in R.A.E

Suit No.1235 of 1963 was executed and possession was taken over from the plaintiffs and thereafter defendant No.3-Kashinath Rahate was put in possession. He, therefore, submitted that application requires consideration.

4. On the other hand, Mr. Kulkarni and Mr. Lulia supported the impugned orders. They submitted that after considering the evidence on record as also the outcome of the earlier round of litigation, the Courts below held that the original plaintiff failed to prove that he is tenant of defendants No.1 and 2 in respect of the suit premises as also is in possession of the suit premises. They submitted that no case is made out for interfering with the impugned orders, in exercise of powers under section 115 of the C.P.C.

5. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, landlord had earlier instituted suit in the year 1963 against the plaintiff for recovery of possession on the ground of arrears of rent. It is not in dispute that on 9th August, 1965, Consent Terms were entered into between the parties. Tenancy of the plaintiff continued subject to his payment of arrears of rent. It is also not in dispute that the plaintiff failed to pay arrears of rent. The Courts below and in particular the Appellate Court has observed in paragraph 17 that tenancy of the plaintiff was determined. Wife of the plaintiff had caused obstruction to execution of the decree. The Appellate Court held that plaintiff's wife had no independent right to be in possession of the suit premises. It was also found that at the time of execution of the decree, original defendant No.3 Kashinath Rahate was in possession. After considering the evidence on record, the Courts below held that the plaintiff is not tenant in respect of the suit premises as also is not in possession of the suit premises. On one hand, the plaintiff claims tenancy as also claims to be in possession of the suit premises and on the other, he claims that being legal representative of original

defendant No.3 Kashinath Rahate, he is entitled to tenancy rights. The Courts below observed that the plaintiff did not establish requirements of section 5(11) (c) of the Act.

6. For the reasons recorded by the Courts below, I do not find that the Courts below committed any error in dismissing the suit. The plaintiffs are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based upon no evidence or that they are contrary to the evidence on record. Merely because on the basis of the evidence on record, another view is possible that itself is not a ground for invocation of powers under section 115 of the C.P.C. Hence, C.R.A fails and the same is dismissed with no order as to costs.

[R.G. KETKAR, J.]