

WRIT PETITION [STAMP] NO.8409 OF 2015

Mr. A.A. Siddiqui i/b A.A. Siddiqui & Associates, for Petitioner.

DATE : 14TH JANUARY, 2019.

Heard Mr. Siddiqui, learned Counsel for the petitioner at length.

3. The plaintiff has instituted the suit for declaration of his tenancy rights in respect of Room No.3, Ramjagi Ramdeo Yadav Chawl situate at Shastri Nagar, S.V. Road, Jogeshwari (West), Mumbai – 400 060 (for short 'suit premises') as also for declaration that the transfer of rent receipt in respect of the suit premises in favour of defendant No.2 is illegal, void and not binding on him. The plaintiff has also sought possession of the suit premises.

4. By order dated 30th November, 2007, the learned trial Judge decreed the suit. Aggrieved by that decision, defendants No.2 to 4 filed appeal before the Appellate Court. By the impugned order, the Appellate Court has allowed the appeal as indicated earlier. It is against this order, the plaintiff has instituted the present Petition.

5. In support of this Petition, Mr. Siddiqui submitted that the learned trial Judge after considering the evidence on record decreed the suit. He has invited my attention to the evidence adduced by the plaintiff's witness and in particular his examination-in-chief as also cross-examination. He submitted that the learned trial Judge while answering issue of jurisdiction held that the Small Causes Court has jurisdiction to entertain and try the suit. While answering Issue No.7, the learned trial Judge held that the suit instituted by the plaintiff in the year 1994 is not barred by law of limitation as it is instituted within 12 years from the date of dispossession of the plaintiff i.e on 21st August, 1984. As per Article 65 of the Limitation Act, 1963, the suit is well within limitation.

6. Mr. Siddiqui invited my attention to paragraph 2 of the examination-in-chief where the plaintiff deposed that on 21st August, 1984 at about 6 p.m when he returned to the suit premises from duty, he found that defendants No.3 and 4 forcibly broke open the lock of the suit premises and since then they are in unlawful occupation of the suit premises. He went to D.N. Nagar Police Station to lodge a complaint but Station Officer/Duty Officer did not take cognizance. He again went back to the suit premises along with his friend Shivlochan and requested defendants No.3 and 4 to handover the vacant and peaceful possession of the suit premises, but in vain. Defendant No.3 caught him and defendant No.4 stabbed him with a knife in his stomach. His friend Shivlochan made a call to the Police. The Police came to the suit

premises and took him to Cooper Hospital. D.N. Nagar Police Station registered a case bearing No. C.R. No.538 of 1984 under section 326 r/w section 114, Indian Penal Code, 1860. D.N. Nagar Police Station filed charge-sheet vide Court Case No.59/P of 1985 before learned Magistrate, 10th Court, Andheri, Bombay. Defendants No.3 and 4 are acquitted. He submitted that as defendant No.4 stabbed him with knife in stomach, the plaintiff did not file the suit immediately and thereafter filed the suit in the year 1994. He submitted that the learned trial Judge has considered this aspect while answering Issue No.7 and the Appellate Court was not justified in reversing the finding.

7. Mr. Siddiqui submitted that the Appellate Court, however, has considered the alleged admissions given by the plaintiff's witness in the cross-examination. The said admissions are not found in the cross-examination of the plaintiff. In other words, the Appellate Court has dealt with so-called admissions of the plaintiff's witness which are not there in the cross-examination of his evidence. He, therefore, submitted that the order passed by the Appellate Court is perverse. As the findings of the Appellate Court are contrary to the evidence on record, the Petition requires consideration.

8. I have considered the submissions advanced by Mr. Siddiqui. I have also perused the material on record. A perusal of the material on record indicates that the plaintiff claimed that he was dispossessed on 21st August, 1984. Admittedly, the suit is instituted in the year 1994.

9. Having regard to the natural course of the conduct of person, if a person alleges that he has been dispossessed unlawfully by defendants No.3 and 4 on 21st August, 1984, he will not keep quiet for more than 10 years. Even if the Police did not take cognizance of his complaint nothing precluded the plaintiff from approaching the Civil Court for obtaining possession. The

Appellate Court has considered this aspect in paragraph 8 of the impugned order.

10. Apart from this aspect, the Appellate Court also considered the admissions given during the cross-examination of the plaintiff from paragraph 7 onwards (wrongly typed). The Appellate Court, after appreciating the evidence on record held that the plaintiff does not know anything about chawl after he transferred the chawl in the year 1978. The evidence of the plaintiff goes to show that he is not knowing anything about the suit premises. For the reasons recorded in paragraphs 7 to 10 (wrongly typed), I do not find that the Appellate Court committed any error in appreciating the evidence on record. The Appellate Court also noted that the plaintiff came with case that he is tenant of the suit premises since 1980. However, not a single rent receipt was produced by him to show that he was residing in the suit premises since 1980. The Appellate Court also noted that no documentary evidence was produced by the plaintiff to show that he was tenant in respect of the suit premises.

11. In paragraph 12 (wrongly typed), the Appellate Court considered the evidence of defendant's witness. After considering the evidence on record, the Appellate Court held that the plaintiff failed to establish that he was tenant of the suit premises.

12. In the light of the aforesaid discussion, I do not find that the Appellate Court committed any error in dismissing the suit. The plaintiff ought to have given explanation in his evidence for filing the suit in the year 1994, if at all he was dispossessed illegally by defendants No.3 and 4 on 21st August, 1984. No explanation worth the name is given by the plaintiff in his evidence.

13. The plaintiff is not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that on the basis of the material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Appellate Court. The plaintiff is not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising powers under section 115 of the C.P.C. No case is made out for interfering with the impugned order. Hence, application fails and the same is dismissed.

[R.G. KETKAR, J.]