

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION [STAMP] NO.7753 OF 2019

Salmabi wd/o Mushtaq Mohammed	]	
Siddique Ansari and others.	]	Applicants
Vs.		
Tasneem Haji Noor Mohammed Ansari	]	
and others.	]	Respondents

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Mr. S.R. Patel, Advocate for the Applicants.
 Mr. S.M. Vyas, Advocate for Respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE : 18th JUNE, 2019.

P.C.

Heard Mr. Patel, learned Counsel for the applicants and Mr. Vyas, learned Counsel for respondents No.1 and 2, at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), applicants, who are legal representatives of original defendant No.4-Mushtaq Mohammed Siddique Ansari (for short 'Mushtaq') have challenged the judgment and decree dated 21st November, 2014 passed by the learned trial Judge in R.A.E Suit No.997 of 2005 as also the judgment and decree dated 5th December, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.79 of 2015. By these orders, the Courts below decreed the suit instituted by respondents No.1 and 2, hereinafter referred to as 'plaintiffs' under section 16 (1) (e) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed defendant

No.4 to hand over vacant and peaceful possession of Room No.13, situate on the ground floor of Ansari Manzil, 4, Kharwa Galli, 1st Lane, Trimbak Parsuram Street, Mumbai 400 004 (for short 'suit premises').

3. In support of this Petition, Mr. Patel submitted that plaintiff No.1 is the owner and landlady of Ansari Building. Suit premises was let out to one Subrati Garibi (since deceased). Defendants No.1 to 3 are the heirs and legal representatives of Subrati Garibi. He submitted that plaintiff No.1 and defendant No.4 are relatives. There was understanding among plaintiff No.1, defendant No.4 and legal representatives of the deceased tenant for transferring the tenancy rights in favour of defendant No.4. Agreed consideration for transferring tenancy was Rs.7,00,000/-. It was further agreed that defendant No.4 will pay 75% of Rs.7,00,000/- to defendants No.1 to 3 and 25% of Rs.7,00,000/- to plaintiff No.1. He submitted that upon the assurance given by plaintiff No.1 about transferring tenancy rights in favour of defendant No.4, defendant No.4 paid valuable consideration to defendants No.1 to 3 and obtained possession from them. Defendant No.4 is lawful tenant of the suit premises. As plaintiff No.1 and defendant No.4 are relatives, no written acknowledgment or writing was obtained from plaintiff No.1 regarding understanding between the parties. He submitted that the application requires consideration.

4. On the other hand, Mr. Vyas supported the impugned orders. He invited my attention to paragraph 7 of the written statement filed by defendant No.4. In paragraph 7, defendant No.4 contended that plaintiff's brother Abdul Hamid Ansari is managing the affairs of Ansari Building. Defendant No.4 was interested in the suit premises and as such approached defendant No.2 and showed his willingness to take the suit premises. Defendant No.4 insisted that he will take the suit premises after rent receipt is transferred by the landlord

either in his name or his father's name. Accordingly, defendant No.2 took him to the plaintiff and also her brother Abdul Ansari who informed defendant No.4 that they have no objection if he takes the suit premises from defendant No.2 provided defendant No.4 should pay them 25% of the market rent for transfer of rent receipt of the suit premises in favour of either defendant No.4 or his father. Defendant No.4 accordingly paid amount of 75% share to defendant No.2 and took possession of the suit premises on 13th June, 2005. Since 13th June, 2005, defendant No.4 is in possession of the suit premises as tenant. Defendant No.4 along with defendant No.2 approached the plaintiff for paying 25% transfer charges. The plaintiff, however, refused to transfer the rent receipt in the name of defendant No.4 and insisted that unless and until defendant No.4 pays transfer charges @ 33%, she is not willing to transfer tenancy. Plaintiff No.1 started demanding Rs.3,31,000/- for transferring tenancy rights.

5. Mr. Vyas submitted that during the course of evidence, defendant No.4 produced purported surrender letter dated 22nd June, 2005 addressed to landlord of Ansari Manzil. The said surrender letter is purportedly executed by defendant No.2 Mohammed Rafiq Mohammad Ibrahim Ansari surrendering the suit premises and tenancy rights in favour of defendant No.4 and requesting the landlord to transfer rent bill in the name of defendant No.4-Mushtaq. Defendant No.2 claimed to have relinquished all his rights in respect of the suit premises and given no objection for executing fresh agreement of tenancy in favour of defendant No.4. He also invited my attention to paragraph 3 of the order dated 19th July, 2014 passed by the learned trial Judge on admissibility of documents and cross-examination of defendant No.4. In the surrender letter defendant No.2 contended that he has handed over possession of the suit premises to defendant No.4. In the cross-examination, defendant No.4 deposed that he took possession of the suit premises from his landlord i.e Abdul Hamid

Ansari. He further deposed that Mohammed Rafiq Ansari had handed over possession of the suit premises to him.

6. Mr. Vyas submitted that basically defendant No.4 has not substantiated relationship between plaintiff No.1 and defendant No.4 as also has not established payment of alleged transfer charges to defendants No.1 to 3 as also to plaintiff No.1. The rent receipt continued in the name of erstwhile tenant Subrati Garibi. The Courts below after appreciating the evidence on record have held that defendants No.1 to 3, legal representatives of original tenant have unlawfully sublet the suit premises to defendant No.4. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, defendant No.4 came with the case that plaintiff No.1 and defendant No.4 are related. However, said contention is not substantiated by adducing evidence. That apart, defendants No.1 to 3 did not enter into the witness box. Defendant No.4 did not examine any independent witness to substantiate his plea of understanding between plaintiff No.1 on one hand and defendants No.1 to 3 and 4 on the other. The purported surrender letter is not pleaded in the written statement. Photo copy of the surrender letter was produced before the trial Court. Defendant No.4 contended that original surrender letter is in the custody of the plaintiff. However, no attempt was made calling upon the plaintiff to produce original surrender letter and also no foundation was laid for adducing secondary evidence.

8. In so far as judgment of the trial Court is concerned, the learned trial Judge has referred to the decision of **Joginder Singh Sodhi Vs. Amar**

Kaur (2005) 1 SCC, 31. The learned trial Judge has referred to section 26 of the Act. In paragraph 20, the learned trial Judge observed that D.W.1 Mushtaq admitted that plaintiff Abdul Hamid Ansari Mohammed had not given any documentary evidence in writing for transfer of suit premises in his favour. The learned trial Judge accordingly concluded that defendants No.1 to 3 have parted with possession of the suit premises for monetary consideration to defendant No.4. Plaintiffs have established ground of unlawful subletting.

9. In so far as Appellate Court's judgment is concerned, after re-appreciating the entire evidence on record, the Appellate Court had confirmed the findings recorded by the trial Court. In paragraph 17, the Appellate Court recorded that in the cross-examination, defendant No.4 Mushtaq admitted that rent receipt of the suit premises is still in the name of the tenant Subrati Garib (since deceased) and alleged surrender letter dated 22nd June, 2005 at Exhibit 64 does not bear signature of Abdul Hamid Ansari. In paragraph 19, the Appellate Court concluded that legal representatives of the deceased tenant, defendants No.1 to 3 sublet the suit premises to defendant No.4 without permission and consent of plaintiff No.1. Thus, after appreciating the evidence on record, the Courts below have concurrently decreed the suit under section 16 (1) (e) of the Act.

10. In the light of above discussion, it cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 16 (1) (e) of the Act are contrary to the material on record. Applicants are not in a position to demonstrate that the findings recorded by the Courts below 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 Courts below. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the

powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

11. At this stage, Mr. Vyas submits that the plaintiffs may be permitted to withdraw the amount of mesne profits deposited by the applicants in the Small Causes Court. The plaintiffs are permitted to withdraw the amount of mesne profits deposited by the applicants in the Small Causes Court, Mumbai unconditionally.

12. All the parties including the Small Causes Court to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]