

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 339 OF 2010

WITH

CIVIL APPLICATION NO. 537 OF 2018

IN

CIVIL REVISION APPLICATION NO. 339 OF 2010

Laxmibai Ramchandra Dhavle (since decd.) ...Applicants
& Other

Versus

Mukund Keru Chougule & Ors. ...Respondents

Tanmay Vispute i/b Prabhakar Shetty – Advocate for the
applicants

Atul Damale Sr. Advocate i/b Adv. Prashant D. Patil – Advocate
for respondent No. 1 to 8.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 11th JULY 2019.

P.C. :

The applicants are the unsuccessful tenants, who suffered concurrent findings in a suit filed by the respondent-landlord for eviction. It all began in 1987.

2. The landlords filed RAE Suit No. 5704 of 1987, against

the two defendants, for eviction on the grounds of subletting, bona fide requirement, nuisance and additions, and alterations. The trial Court decreed the Suit in January 2007. Aggrieved, both the defendants filed Appeal No. 161 of 2007, but the Appellate Bench of the Small Cause Court dismissed the Appeal in February 2010 through an elaborate judgment. Then, the legal representatives of the defendants filed this Civil Revision Application invoking Section 115 of CPC.

3. Incidentally, when the suit was pending, the first defendant died in 1992. Later in 2004, the second defendant too died. Against the decree of eviction, only the legal representatives of the second defendant filed Appeal No. 161 of 2007. The Appellate Bench of the Small Cause Court, at Bombay, dismissed the Appeal. Eventually, the second defendant's legal representatives filed this Civil Revision Application in 2010.

4. In the above factual backdrop, Shri Tanmay Vispute, the learned counsel for the applicants, has submitted that the impugned judgment is against the evidence on record. According to him, in eviction proceedings involving similar property under identical circumstances, the landlord suffered an adverse finding. But the courts below have disregarded that aspect. He has further submitted that the second defendant had been living in the Suit Schedule room from 1955 until his death in 2004. After that, his children continued to live in the same property. Therefore, he ought to be treated as the legitimate

occupant of the property in terms of Section 15 A of the Maharashtra Rent Control Act, 1999.

5. In other words, as the second defendant had possession of the property before 1.2.1973, his occupation as a sub-tenant, if it were to be treated as such, should be regarded as legitimate. The learned counsel has also submitted that the second defendant was constrained to alter the structure. It was due to the landlord's inaction to effect the alterations.

6. Finally, the learned counsel has drawn my attention to the Civil Application No. 537 of 2018 filed before this Court. According to him, the applicants intend to bring on record the subsequent developments. When queried about those subsequent developments, the learned counsel has submitted that the land on which the structure stand actually belongs to Bombay Municipal Corporation, which allotted it to the landlords. According to him, recently BMC issued a notice to the landlords to quit as the period of grant ended. In that context, the learned counsel has submitted that the decree the landlords secured could not be executed, as they are no longer the landlords. He has also pointed out that the BMC's notice to quit has already been challenged by the landlords in a Writ Petition before this Court.

7. In response, the learned Senior Counsel for the respondent-landlords has submitted that initially the trial Court has found the second defendant to be an unauthorized occupant, for the first defendant-original tenant had illegally

inducted him. Therefore, having ruled on that point, it felt that the other issues paled into insignificance. But in Appeal, the Appellate Bench of the Small Cause Court, the learned Senior Counsel stresses, has considered every issue in-depth and rendered an exhaustive judgment.

8. To elaborate, the learned Senior Counsel has submitted that either the issues framed by the Trial Court or the points framed by the Appellate Bench for its consideration are essentially questions of the fact. And almost all those issues except the ground of nuisance were returned in the landlords' favour. Then the learned Senior Counsel has taken pains to take me through the Appellate Bench judgment issue wise to hammer home his contention that the judgment is flawless and requires no interference.

9. About the alleged subsequent developments which the applicants intended to bring on record, the learned Senior Counsel points out that the notice issued by the BMC does not concern the suit schedule property. According to him, it concerns the vacant site adjacent to the suit property. At any rate, the learned Senior Counsel has urged that under Section 115 of CPC the jurisdiction bounds of this Court are limited and that this Court would be averse to invoking Section 115 under any circumstance to disturb concurrent findings on questions of fact.

10. Heard, the learned counsel for the applicants and the learned Senior Counsel for the respondents.

11. As the record reveals, the landlords filed the Suit in 1987, and the trial began only in 2004. Eventually, in 2007 the landlords secured the decree. The Trial Court initially framed these issues:

1. Do the plaintiffs prove that defendant No. 1 unlawfully sublet the suit premises to defendant No.?
2. Do they further prove that defendants are source of nuisance and annoyance to the neighboring occupants?
3. Do they further prove that they require the suit premises reasonable and bona fide.
4. To shown greater hardship will be caused by passing the decree than refusing to pass it?
5. Whether the plaintiffs are entitled for decree of possession as prayed for?
6. What decree and order?

12. Later the trial Court framed these additional issues:

1. Does plaintiff prove that defendants No. 2 alongwith his son illegally and without any permission of the B.M.C. carried out structural additions, alterations or construction work of permanent nature in the suit premises?
2. Does plaintiff prove that defendant No. 2 alongwith his son has illegally encroached upon any compulsory open common passage of the suit premises or illegally constructed brick wall fencing after planting and showing plants therein?
3. Does plaintiff prove that defendant No. 2 has committed any act of waste, or loss to the suit premises as well as neighboring room No. 1?
4. Does plaintiff prove that defendant No. 2 has acquired ownership flat at Dombivali?

5. Does plaintiff prove that defendant is filthy of nuisance and annoyance to plaintiff No. 2 and his family?
6. Does defendant No. 2 prove that suit is bad for non-joinder of necessary party?

13. Then the trial Court, on the appreciation of evidence, has held in the landlords' favour. As to the additional issues, the record reflects that the findings were negative. In fact, in the face of positive finding on issues 1 to 5, the trial Court has felt that the other issues had become irrelevant. Then, aggrieved the legal representatives of the second defendant alone filed the statutory appeal.

14. In Appeal No. 161 of 2007, the Appellate Bench rendered its judgment on 20.02.2010. The judgment, in fact, runs into 72 pages. For its appreciation, the Appellate Bench has formulated these points: -

1. Whether the Plaintiffs prove that Defendant No.1 unlawfully sublet the suit premises to the defendant No. 2?
2. Whether the plaintiffs prove that they require the suit premises reasonably and bonafide for their own use and occupation?
3. To whom greater hardship will be caused by passing the decree than refusing to pass it?
4. Whether the Plaintiffs prove that defendants have carried out additions and alterations of permanent nature in the suit premises without the consent of the Plaintiffs?

5. Whether the Plaintiffs prove that defendants have committed any act of waste, damage or loss to the suit premises as well as neighboring room No. 1?

6. Whether the Plaintiffs prove that defendant is causing nuisance and annoyance to the pleadings?

7. Whether the Plaintiffs prove that the defendants have acquired suitable alternative accommodation?

8. Whether there is need to interfere in the findings recorded by the Trial Court?

9. What order?

15. Then after re-appreciating the entire evidence on record, the Appellate Bench has held issues 1 to 5 in the landlord's favour. As to the nuisance, it held in the tenants' favour. On the question whether the applicants have acquired the suitable alternative accommodation, the Appellate Bench has held that defendants Nos. 2A and 2C, that is the Applicant Nos. 1 and 2, have acquired a suitable accommodation. Eventually, the Appellate Bench has refused to interfere with the trial Court's judgment, save on certain technical aspects which will not affect the adjudication now.

16. Indeed, the applicants' counsel has submitted that the second defendant that is the present applicants' predecessor had been in possession of the property since 1955 until his death. As the courts below have concurrently found, the burden lay on the second defendant, but he did not discharge it. Indeed, the very

second defendant admitted that he did raise some structures on the suit property, under compelling circumstances. But the record does not reveal any communication or correspondence between the landlords and the second defendant before he was compelled to alter the structure. At any rate, the courts below have held that once the second defendant was established to be an unauthorized occupant, the legitimacy of his subsequent conduct assumes no importance. About the alleged subsequent developments, the landlords continue to be the landlords vis-à-vis the applicants. Their title dispute, if any, with BMC will not affect their right to seek eviction for they alone let the original tenant in the possession and continued to intermeddle with the property. At any rate, there is nothing on record that the respondents have lost their title to the property. It is a non-issue, however.

17. In a conspectus, I reckon all the issues framed and considered by the courts below are essentially questions of fact. Under Section 115 of CPC, it is impermissible for this Court to re-appreciate the evidence and upset those well-considered findings of fact.

I, accordingly, dismiss the Civil Revision Application. All the Civil Application pending also stand closed.

[DAMA SESHADRI NAIDU, J.]