

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6879 OF 2019

Mr. Salim Usman Khan

...Petitioner

Versus

Mr. Irshad Imdad Khan
and another.

...Respondents

....

Ms. Mahek Bookwala a/w. Shubham Mittal i/b. FF & Associates, for the
Petitioner.

Mr. Ashraf Diamondwala i/b. Diamondwalla & Co. for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 24th JUNE, 2019

P.C.

1. Heard Ms. Mahek Bookwala, learned counsel for the petitioner and Mr. Ashraf Diamondwala, learned counsel for respondent No.2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2', has challenged the order dated 13.3.2019 passed by the learned Judge, Court Room No.17 of the Court of Small Causes at Mumbai below Exhibit-56 in R.A.D. Suit No.1533/2013. By that order, the learned trial Judge rejected the application made by defendant No.2 under Order VII Rule 11(a) & (d) of the Code of Civil Procedure, 1908 (for short, 'C.P.C.').

3. In support of this Petition, Ms. Bookwala strenuously contended that on the date of filing of the suit the father of the plaintiff was not alive. The plaintiff has sought declaration in respect of tenancy of the suit premises in favour of a dead person. As on date of filing of the suit the plaintiff's father is not alive, cause of action for such suit is not in existence. The plaint is, therefore, liable to be rejected under Order VII Rule 11(a) of C.P.C. The suit is also barred by law and as such the plaint is liable to be rejected under Order VII Rule 11(d) of C.P.C.

4. On the other hand, Mr. Diamondwala supported the impugned order. He invited my attention to prayer clauses (a) and (b) made in the suit and submitted with the plaintiff is claiming through his father Mr. Imdad Khan Rehman Khan.

5. He submitted that by prayer clause (a), the plaintiff has claimed declaration that his father late Imdad Khan Rehman Khan during his lifetime was lawful monthly tenant of defendant No.1 landlord in respect of the suit premises. By prayer clause (b), the plaintiff has sought declaration that after death of his father late Imdad Khan Rehman Khan, the plaintiff is lawful monthly tenant and/or co-tenant of defendant No.1 landlord in respect of the suit premises. The learned trial Judge, therefore, rightly rejected the application.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Prayer clauses (a) and (b) of the plaint read thus :

- “(a) That this Hon'ble Court may be pleased to pass an order or decree thereby declaring that the Plaintiff's father (late) MR. IMDAD KHAN S/O. REHMAN KHAN during his lifetime was lawful monthly tenant of the Defendant No.1 landlord in respect of the suit premises i.e. Room No.20, First Floor, Badrunnisa Building, situated at 20 Shaikh Burhan Kamruddin Street, Nagpada, Mumbai 400 008;
- (b) That this Hon'ble Court may be pleased to pass a decree in favour of the Plaintiff declaring that the Plaintiff is lawful monthly tenant and/or co-tenant of the Defendant No.1 landlord in respect of the suit premises i.e. Room No.20, First Floor, Badrunnisa Building, situated at 20 Shaikh Burhan Kamruddin Street, Nagpada, Mumbai 400 008 or its permanent alternate accommodation to be allotted in lieu of the suit premises and entitled for the possession of the same;”

7. A perusal of prayer clause (a) shows that by that prayer the plaintiff has claimed declaration that his father late Imdad Khan Rehman Khan during his lifetime was lawful monthly tenant of defendant No.1 landlord. By prayer clause (b), the plaintiff has claimed declaration that he is lawful monthly tenant. The plaintiff is claiming through his father. In view thereof, I do not find any merit in the submission of Ms.Bookwala that as on date of filing of the suit the plaintiff's father was not alive, the plaint is liable to be rejected for want of cause of action as contemplated by Order VII Rule 11(a) of C.P.C.

8. Insofar as the contention that the plaint is rejected under Order VII Rule 11(d) of C.P.C. is concerned, it was contended that the plaintiff is challenging the transaction. In this regard, reliance is placed on prayer clause (c). By that prayer, the plaintiff has sought direction against defendant No.1 to hand over possession of room No.20, First Floor, Badrunnisa Building, situate at 20, Shaikh Burhan Kamruddin Street, Nagpada, Mumbai – 400 008 or its permanent alternate accommodation to be allotted in lieu of the suit premises. While dealing with this contention, the learned trial Judge observed in paragraph-11 that defendant No.2 had raised preliminary objection to the jurisdiction of the Small Causes Court. After hearing both sides and on the basis of evidence on record, the issues were answered in the affirmative. The order was challenged in Revision Application and the Appellate Court dismissed Revision Application.

9. For the reasons recorded in paragraph-11 of the impugned order, I do not find that the plaint is liable to be rejected under Order VII Rule 11(d) of C.P.C.. Hence, petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)