

Shitala Durgaprasad Vishwakarma	...	Applicant
Vs.		
Bitjuram Rajpat Yadav	...	Respondent

Mr. D. D. Singh for Applicant.
Mr. P. J. Thorat for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 2, 2019

Heard Mr. Singh, learned Counsel for the applicant and Mr.Thorat, learned Counsel for the respondent.

2. In view of the order dated 26.03.2019 and at the joint request of the learned Counsel for the parties, Civil Revision Application is taken up for admission.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 30.11.2015 passed by the learned Judge of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. & R. Suit No.348 / 821 of 2005 as also the judgment and decree dated 07.04.2017 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in (2a) Appeal No.9 of 2016. By these orders, the Courts below decreed the Suit instituted by the respondent under Section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to handover vacant and peaceful possession of room No.12 admeasuring 10' x 15' ft. in Chawl No.1, Birju Rajpati Yadav Chawl situate on the land bearing Survey No.225 (part) and corresponding to C.T.S.No.58 (part) of Village Malad,

Taluka Borivali, Mumbai 400 097 (for short 'suit premises').

4. In support of this application, Mr. Singh strenuously contended that the judgment of the Appellate Court is far from satisfactory. The Appellate Court is a last fact finding Court. The Appellate Court has not discussed the evidence on record. The Appellate Court has also not given reasons while affirming the decree passed by the trial Court under Section 15 of the Act. He has taken me through paragraphs 2, 3 and 9 of the plaint as also written statement filed by the defendant. Mr. Singh has invited my attention to cross-examination of D.W.1-Sitalaprasad Durgaprasad Vishwakarma conducted on 15.01.2015. D.W.1 was shown counterfoil of rent receipt, exhibit-23. He denied that the signature on the backside of the counterfoil of rent receipt is his signature. He further deposed that signature on written statement is not his signature and it might be the signature of his son Lalchand. He admitted that Vakalatnama at exhibit-9 bears his signature. He denied that the signature on Vakalatnama and signature on counterfoil at exhibit-23 are the same. In short, he submitted that the defendant did not admit that signature on the counterfoil of rent receipt at exhibit-23 is his signature. The Appellate Court however proceeded to hold that defendant admitted relationship of landlord and tenant between the parties, after going through the reply dated 10.02.2005 at exhibit-21 given by the defendant. He submitted that defendant did not admit relationship of landlord and tenant in the reply. He further invited my attention to the counterfoils annexed along with the plaint. Bill No.89 dated 01.02.1992 referred to room No.14. He submitted that in the evidence, plaintiff produced bill No.89 showing that it is in respect of room No.12. In other words, plaintiff had committed interpolation by changing room No.14 to room No.12 in bill No.89 produced during the course of evidence. He submitted that as there is no relationship of landlord and tenant between

the parties, the Courts below were not justified in decreeing the Suit under Section 15 of the Act.

5. Mr. Singh further submitted that since the suit premises is situate in the slum area, in the absence of any permission from the Competent Authority as contemplated by Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act'), the Courts below were not justified in decreeing the Suit. He has taken me through the Notification dated 15.04.1999, which refers to declaration of slum area under Section 4(1) of the Slum Act by the Competent Authority. C.T.S.No.225, 225/1 to 225/5 admeasuring 73.30 sq.mtrs. is declared as slum area.

6. Mr. Singh has also taken me through the evidence of D.W.3 - Arvind Rama Koli (Patil) working as Aval Karkoon in the office of the Deputy Collector (Encroachment / Removal), Malad. He had produced Gazette at exhibit-52. He deposed that as per that Gazette, C.T.S.No.225/1 to 225/5 is declared as slum area from 31.05.1979. Mr.Singh submitted that D.W.3 deposed that pitch card is issued for identification of the person and his family residing in the said premises. He submitted that though in paragraph 13, the Appellate Court recorded that defendant has not produced photo-pass issued to him after depositing money as demanded in Exhibit-41/2. He submitted that order dated 08.07.2014 relating to admissibility of documents produced by the defendants indicate that photocopy of the document at Sr. No.3 was produced with letter dated 19.12.2002. It was accordingly admitted in evidence and marked exhibit-41(1) and letter as exhibit-41(2). As defendant issued photo-pass under Section 3Y of the Slum Act, he is a protected occupier, and therefore, the Courts below were not justified in passing eviction decree against the defendant. For all these reasons, he

submitted that the Application requires consideration.

7. On the other hand, Mr. Thorat supported the impugned orders. He submitted that defendant did not dispute relationship of landlord and tenant between the parties. In fact, in the written statement, defendant came with the case that plaintiff agreed to sell the suit premises to him by executing agreement of sale on 14.08.1987. Thus, defendant admitted title of the plaintiff. He submitted that after appreciating the evidence on record as also admission of the defendant, the Courts below held that from November 1992 onwards, defendant has not paid rent to anybody including the plaintiff. The Courts below were therefore, justified in decreeing the Suit under Section 15 of the Act.

8. In so far as the contention of the defendant that the suit premises is situate in slum area is concerned, he submitted that D.W.3 admitted that C.T.S.No.58 (part) is not declared as slum area under the Gazetted Notification. He, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Mr. Singh submitted that there is no relationship of landlord and tenant between the parties. He submitted that the rent receipt produced by plaintiff along with the plaint shows that defendant is tenant in respect of room No.14. The rent receipt produced during the course of evidence by the plaintiff witness clearly reveals that there is interpolation. Room No.14 is changed to room No.12. It is not possible to accept this submission for more than one reason. In the first place, defendant did not categorically deny relationship of landlord and tenant in the reply dated 10.02.2005 given to the demand notice dated

10.01.2005. Secondly, in the written statement also, defendant did not deny relationship of landlord and tenant between the parties. In paragraph 8 of the written statement, the defendant contended that by virtue of agreement for sale dated 14.08.1987, defendant had purchased the suit premises from the plaintiff. That apart, defendant also did not dispute description of the suit premises mentioned in paragraph 1 of the plaint. In paragraph 1 of the plaint, plaintiff specifically asserted that defendant is a monthly tenant occupying room No.12 in chawl No.1 admeasuring 10' x 15' ft.

10. It is also material to note that during the course of evidence of defendant, the agreement dated 14.08.1987 was not marked as exhibit on the ground that document is not duly proved and was marked as 'Article Y3'. The defendant further admitted in the cross-examination that he is not giving rent of suit premises to anybody since 1982. According to him, he is the owner of the suit premises and hence, he is not paying the rent to anybody. Thus, as the defendant admitted relationship of landlord and tenant between the parties as also admitted that he did not pay rent to anybody since 1982, I do not find that the Courts below committed any error in decreeing the Suit under Section 15 of the Act.

11. In so far as the contention that the suit premises is situate in the slum area is concerned, after appreciating the evidence on record, the Courts below have held that defendant failed to establish that the suit premises is situate in the slum area. In the cross-examination, D.W.3 admitted C.T.S.No.58 (part) is not mentioned in the Government Gazette at exhibit-52. A perusal of the gazetted Notification shows that C.T.S.No.225, 225/1 to 225/5 admeasuring 73.30 sq.mtrs. is declared as slum area. In the present case, plaintiff has described that room No.12 is

situate in **Survey No.225 (part) corresponding to C.T.S.No.58 (part)**. In view thereof as also for the clear cut admission of D.W.3, I do not find that the Courts below committed any error in holding that defendant failed to establish that the suit premises is situate in slum area.

12. Mr. Singh submitted that photo-pass was issued to the defendant. Section 3X(b) of the Slum Act defines the expression 'photo-pass' to mean the identity card cum certificate issued by the Government in the prescribed format under Section 3Y. Section 3X(c) defines the expression "protected occupier" to mean an occupier of a dwelling structure who holds a photo-pass. Mr. Singh submitted that as photo-pass is issued to the defendant, he is a protected occupier. The plaintiff-landlord cannot evict him. He has not substantiated this submission either by any precedent or by principle.

13. Thus, after appreciating the evidence on record, the Courts below have concurrently decreed the Suit under Section 15 of the Act. Defendant was 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. Defendant was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)