

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.36 OF 2019

Church of Our Lady of Health, Sahar] Applicants
Vs.
Vishnu Patel and another.] Respondents

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Mr. Naved Chaduhary i/b Ms. Asha Bhuta, learned Counsel for the Applicants.
Mr. D. G. Mishra, learned Counsel for Respondent No.1.
Mr. C.J. Chavan, learned Counsel for Respondent No.2.

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CORAM : R.G. KETKAR, J.

DATE : 5TH MARCH, 2019.

P.C.

Heard Mr. Chaudhary, learned Counsel for the applicants, Mr. Mishra, learned Counsel for respondent No.1 and Mr. Chavan, learned Counsel for respondent No.2 at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicants have challenged the order dated 7th September, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 13 in (2a) Appeal No.18 of 2016. By that order, the Appellate Court rejected the application made by the applicants herein for permitting them to intervene in the appeal filed by respondent No.2, hereinafter referred to as 'defendant'.

3. In view thereof, leave to convert Civil Revision Application in Writ Petition is granted. Amendment shall be carried out within one week from today.

4. First respondent, hereinafter referred to as 'plaintiff' has instituted suit against the defendant for recovery of possession of Room No.7 situate on the ground floor of Chanduramji Chawl situate at Dr. Charat Singh Colony Road, A.G. Link Road, Andheri (East) Mumbai 400 093 (for short 'suit premises'), *inter alia*, contending that he is owner and landlord of the said chawl. The defendant was monthly tenant in respect of the suit premises @ of Rs.40/-. The plaintiff had constructed the said chawl and let out the suit premises to the defendant. The plaintiff sought possession invoking grounds under sections 15, 16 (1) (b), 16 (1) (c), 16 (1) (g) and 16 (1) (a) of the Maharashtra Rent Control Act, 1999 (for short 'Act') r/w section 108 (o) of the Transfer of Property Act, 1882 (for short 'T.P. Act'). By order dated 30th November, 2015, the learned trial Judge decreed the suit and directed the defendant to deliver vacant and peaceful possession of the suit premises to the plaintiff within three months from the date of the decree. The suit was decreed only under section 15 of the Act.

5. Aggrieved by that decision, the defendant preferred appeal before the Appellate Bench of the Court of Small Causes at Mumbai. During pendency of the appeal, the applicants herein filed application Exhibit 13 for intervention in the appeal. By the impugned order, the Appellate Court rejected the said application.

6. In support of this application, Mr. Chaudhary submitted that Church of Our Lady of Health (for short 'Church') executed agreement for sale in favour of the plaintiff on 19th September, 1989. The Church agreed to sell all

that piece or parcel of land together with the structures standing thereon situate lying and being at Charat Singh Colony Road, Andheri (East), Mumbai bearing C.T.S. No.132/52-61, No.416 and No.416/1-5 of Village Chakala, Taluka Andheri in the Registration District and Sub-District of Mumbai City and Mumbai Suburban admeasuring about 238 square meters. Subsequently, the plaintiff executed Indemnity Bond on 31st October, 1992 setting out therein that he is unable to fulfill the terms and conditions of the said agreement to be observed and performed by him. He is not able to make payment of the balance consideration, and also for other reasons, he requested the vendor (Church) to cancel and revoke the said agreement dated 19th September, 1989 and return to him without interest the amount of Rs.40,000/- paid by him as an Earnest money or deposit which the vendor has agreed to do on execution of the Indemnity and the return of the said agreement duly cancelled. He submitted that thus the agreement on the basis of which, the plaintiff claims that he is owner and landlord of the suit premises is itself revoked by none other than the plaintiff himself. Thus, the plaintiff is neither landlord nor owner of the suit premises. He has no locus to maintain the suit against the defendant.

7. Mr. Chaudhary also invited my attention to communication dated 29th April, 1993 addressed by the Superintendent (J), Office of the Charity Commissioner Maharashtra State, Bombay to the sole trustee requesting to furnish document more particularly set out therein and the response dated 9th July, 1993 of Advocate of the Church. He submitted that a perusal of the response dated 9th July, 1993 shows that agreement dated 19th September, 1989 is duly cancelled. Mr. Chaudhary, therefore, submitted that the Appellate Court was not justified in rejecting the application for intervention as it is the Church, who is the owner of the property including the chawl where the suit premises is situate. Hence, the Petition requires consideration.

8. On the other hand, Mr. Mishra supported the impugned order. He has also relied on the order dated 13th February, 2019 passed by this Court in Writ Petition No.2426 of 2018. That Petition was instituted challenging the order dated 7th November, 2017 passed by the Appellate Bench of the Court of Small Causes at Mumbai (Bandra Branch) in MARJI Application No.48 of 2017 in Appeal (Stamp) No.178 of 2017 arising out of R.A.E & R Suit No.450/852 of 2010. By that order, the Appellate Court had rejected the application made by the petitioners for condoning delay of 715 days in filing the substantive appeal against the judgment and decree dated 6th May, 2015. He submitted that during the course of hearing of that Petition, Ms. Bhuta made oral application for intervention on behalf of the Church and subsequently, on instructions of Joseph Fransis Rajnaigam, Authorized Officer of the Church did not press the intervention application in the said Petition.

9. Mr. Mishra submitted that the Appellate Court observed that the plaintiff has instituted suit for recovery of possession of Room No.7 and is not claiming title of the land. That apart, by order dated 18th October, 2016 passed by this Court (Coram: S.J. Kathawalla J.) in Notice of Motion (L) No.2945 of 2016 in Suit (L) No.933 of 2016, the defendant therein (plaintiff herein) was granted liberty to recover possession of the suit premises occupied by the tenants but was restrained from creating any new tenancy or inducting any person in any of the premises/units in the structure of the suit property. He, therefore, submitted that no case is made out for interfering with the impugned order.

10. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In the present case, Church has claimed ownership of the structure as also land which according to it includes Chanduramji Chawl where the suit premises is situate.

A perusal of the impugned order shows that the Appellate Court noted that extract of City Survey No.132/52 to 132/64 shows that it is in the name of intervener (Church). The Appellate Court, therefore, *prima facie* held that intervener (Church) is owner of Survey No.86A City Survey No.132/7 to 132/70. The Appellate Court observed that the plaintiff has not claimed ownership over the land but is claiming that he is landlord of the chawl constructed upon the land which belongs to Church. The Appellate Court dealt with the evidence adduced by the defendant where she admitted that she was not inducted as a tenant in the suit premise by the Priest of the Church. She admitted that the premises was not constructed by the Priest of the Church but by the plaintiff. She used to pay rent to the plaintiff. She further admitted that in the year 1994, the plaintiff had converted temporary construction into pucca construction and she along with other tenants were inducted there. All the tenants are paying rent to the plaintiff from 1994. The Appellate Court also dealt with the order dated 24th October, 2016 passed by this Court in Suit No.933 of 2017 filed by Church on the Original Side of this Court against the plaintiff herein. After considering the material on record, the Appellate Court rejected the application.

11. Apart from the reasons recorded by the Appellate Court, section 35 of the Act lays down that nothing contained in sections 33 and 34 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises. In other words, while exercising powers under the Rent Control Legislation, the Court is not expected to decide issue of title. In the present case, the Church has already filed suit on the Original Side of this Court and the same is pending. That apart, in India, concept of dual ownership is recognized. In the case of **Dinkar S. Vaidya Vs. Ganpat S. Gore**, AIR 1981 Bombay 190, the learned Single Judge has dealt

with the concept of dual ownership. In paragraph 45, it was observed thus;

“45. We have to consider the aggregate effect of all the above mentioned authorities for examining the legal position in this behalf. Before weighing and examining the above authorities, it will be convenient at this stage to examine the first principles to which the question, in the ultimate analysis, relates. It is a matter of first principles that in India the doctrine of dual ownership is recognised. This doctrine means that the owner of the land is not necessarily presumed to be the owner of the structure standing upon it. In this respect Indian Law is at variance with English Law. In England the doctrine of superficies solo edit is recognised, meaning thereby that there is a presumption that the owner of the land is the owner of the structure on the land as well. This question becomes relevant in the context of the fact that in India the owner of the structure is frequently a lessee in respect of the land and the owner of the land has no interest whatsoever in the structure at all . The owner of the structure lets out the structure to his own tenants. The question then arises as to what is the right of the tenant of the structure vis-a-vis the land.”

12. In view thereof and for the reasons recorded by the Appellate Court in the impugned order, I do not find that the Appellate Court committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]