

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO.119 OF 2019

Vinod Durlabhdas Soni alias Dhorda ... Applicant  
Vs.

Vijay Durlabhdas Soni alias Dhorda and others ... Respondents

Mr. G. S. Godbole, Senior Advocate i/b. Mr. Kaustubh Thipsay a/w. Ms Shivani Samel for Applicant.

Mr. Durgesh Kulkarni i/b. Lex Firmus for Respondents No.1 and 2.

**CORAM : R. G. KETKAR, J.**

**DATE : APRIL 5, 2019**

**P.C. :**

Heard Mr. Godbole, learned Senior Counsel for the applicant and Mr. Kulkarni, learned Counsel for the 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.'), applicant, hereinafter referred to as 'plaintiff', has challenged the judgment and decree dated 27.02.2013 passed by the learned trial Judge in L.E.&C. Suit No.50/80 of 2007 as also the judgment and decree dated 14.06.2018 passed by the Appellate Bench of the Small Causes Court in (P) Appeal No.5 of 2013. By these orders, the Courts below dismissed the Suit instituted by the plaintiff.

3. The plaintiff instituted Suit initially on the Original Side of this Court being Suit No.1622 of 2006 inter alia contending that he is the owner of flat No.B-203, second floor in the building known as "Panchvati Apartments Co-op. Hsg. Soc. Ltd.", S.V. Road, Dahisar (East), Mumbai 400 068 (for short 'suit premises') since August, 1985. The plaintiff is holding in his own name five fully paid up shares each of Rs.50/- bearing distinctive Nos.191 to 195 under share certificate No.39/1 issued by Panchvati Apartments Co-operative Housing Society

Limited (for short 'Society'). The plaintiff is a member of the said Society. The plaintiff contended that he acquired the suit premises in consideration of his having surrendered his tenancy rights of Room No.10, Adam Hasan Chawl, S. V. Road, Dahisar (E), Bombay 400 068 (for short 'Room No.10 of Adam Hasan Chawl') of which he was a tenant. The Panchvati Apartment is constructed on the plot where Adam Hasan Chawl was situate. The plaintiff contended that he has four brothers, namely, Amritlal (the eldest), Pankaj (second), Pradeep (third) (defendant No.3) and Vijay (fourth) (defendant No.1). The eldest brother Amritlal resides at Penkar Pada, Dahisar (East). Plaintiff-Vinod resides at C-404, Panchavati, Dahisar (East), Pankaj resides at Dubey Compound, Dahisar (East). The fourth and fifth brothers, being defendants No.1 and 3, namely, Vijay and Pradeep reside in the suit premises along with their respective families.

4. The plaintiff contended that in the year 1985, he allowed defendant No.1 to reside in the suit premises as a gratuitous licensee. Defendant No.1 married to defendant No.2 in the year 1992-93 when he was allowed to reside in the suit premises at the request of the defendants No.1 and 2 as gratuitous licensee. They were allowed to stay for a period of one year. The plaintiff also allowed defendant No.3 to reside in the suit premises as a gratuitous licensee from 1985 for a short period as he is the younger brother of the plaintiff. Defendants No.1, 2 and 3 promised to remove themselves in or about 1993. The plaintiff relied upon defendants No.1 and 3 being his brothers. After expiry of the period of licence, defendants refused to vacate the suit premises. The plaintiff, therefore, instituted L.E.Suit No.64/69 of 1995 against the defendant No.1 and his brother Pankaj for mandatory injunction and other ancillary reliefs. By order dated 14/20.11.2000, the Suit was decreed. Defendant No.1 filed Appeal No.52 of 2001 in the Court of Small Causes at Mumbai. On 27.02.2003, Appeal was allowed and the

plaint was ordered to be returned for presentation to the proper Court. The plaint was presented before the Bombay City Civil Court at Bombay. The Suit was numbered as Suit No.1685 of 2003. By order dated 18.03.2005, the Suit was dismissed by the City Civil Court. The plaintiff preferred Appeal No.1335 of 2005 in this Court. By order dated 03.08.2005, this Court dismissed the Appeal.

5. The plaintiff further came with the case that his father had taken room B-14 in Chawl No.7, Nonga Chawl (Kishna Colony) in or around 1979. His father gave up tenancy rights in the year 1986. Plaintiff's father died on 27.12.1991. The plaintiff further came with the case that one Prajapati was the tenant of Room No.10 of Adam Hasan Chawl. The plaintiff and Prajapati agreed in 1982 that the plaintiff would be entitled to the benefits of the tenancy rights of Room No.10 of Adam Hasan Chawl. The said Adam Hasan Chawl was demolished and M/s. Shiv Builders constructed Panchavati Apartment. The plaintiff acquired the suit premises in terms of the agreement dated 21.12.1983. The suit premises admeasures about 765 sq.ft. and was given to the plaintiff in lieu of surrender of Room No.10 of Adam Hasan Chawl by M/s. Shiv Builders. The tenancy rights of Room No.10 of Adam Hasan Chawl originally stood in the of Prajapati, which Prajapati had given to the plaintiff.

6. Before shifting to Panchvati Apartments in August 1985, plaintiff was residing in room No.B/14, Nonga Bharwad Chawl. The plaintiff acquired the suit premises in exchange of Room No.10 of Adam Hasan Chawl, which originally stood in the name of Prajapati. In or about 1986, after acquiring the suit premises, plaintiff's father disposed of the said room at Bharwad Chawl. The plaintiff contended that there is no connection with room No.B/14 at Nonga Bharwad Chawl and acquiring the suit premises by the plaintiff. The suit premises is exclusive and sole

property of plaintiff and none else. The plaintiff terminated the gratuitous licence of the defendants by issuing notice dated 16.03.2006. Defendants No.1 and 2 gave reply dated 23.03.2006 falsely contending that plaintiff is not the owner of the suit premises and that they are not the gratuitous licensee. The plaintiff, therefore, instituted Suit for declaration that he is the owner of the suit premises and the defendants have no right, title or interest therein and are the trespassers in respect thereof. The defendants be ordered to quit, vacate and deliver vacant and peaceful possession of the suit premises to the plaintiff among other reliefs.

7. Defendants No.1 and 2 filed written statement dated 19.12.2007. Defendants No.1 and 2 contended that their father, Shri Durlabhdas Soni @ Dhordo during his lifetime assigned his interest in the tenanted premises, namely, Room No.B-14 in Chawl No.7 known as Nonga Bharwad Chawl situate at Dahisar (East), Mumbai 400 068 for a valuable consideration of Rs.70,000/- and sold the valuable ornaments of his wife and from the money received as also out of his own earnings and from income of the defendant No.1, he had purchased the suit premises in the name of the plaintiff being his eldest son. The suit premises was acquired from the joint income and fund of Hindu Undivided Family (HUF) property consisting of Durlabhdas and his sons and other family members. The defendants denied that plaintiff is the owner of the suit premises. They denied that plaintiff acquired the suit premises on surrendering tenancy rights of Room No.10 of Adam Hasan Chawl of which he was allegedly a tenant. The defendants specifically contended that plaintiff was never tenant or occupant of Room No.10 of Adam Hasan Chawl at any point of time nor the suit premises were acquired in lieu of any room at Adam Hasan Chawl as alleged.

8. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. By order dated 27.02.2013, the learned trial Judge dismissed the Suit. Aggrieved by that decision, plaintiff preferred Appeal. By order dated 14.06.2018, the Appellate Court has dismissed the Appeal. It is against these orders, plaintiff has instituted the present C.R.A.

9. In support of this C.R.A., Mr. Godbole strenuously contended that the Courts below totally misdirected themselves while dismissing the Suit. He submitted that when the agreement dated 21.12.1983 at exhibit-44 conclusively shows that plaintiff had acquired ownership rights under that agreement, the Courts below were not justified in going into the question as to how the suit premises was acquired by the plaintiff. He submitted that defendants came with the case that the suit premises is acquired from the joint family funds. The defendants have failed to establish their defence. He submitted that defendants can lead evidence to contradict the terms of agreement dated 21.12.1983 at exhibit-44 by adducing evidence of oral agreement between the parties. In the present case, however, defendants have not adduced any evidence as regards oral agreement and thus the parties are bound by the agreement dated 21.12.1983 and no enquiry was required to be conducted in that regard. Once it is established that plaintiff is the absolute owner of the suit premises, the Courts below were not justified in dismissing the Suit. The trial Court as well as the Appellate Court had no option but to hold that the plaintiff is the owner of the suit premises.

10. Mr. Godbole relied upon paragraph 17 of ***Appasaheb Peerappa Chandgade vs Devendra Peerappa Chandgade***, (2007) 1 SCC 521. In paragraph 17, the Apex Court after survey of various judgments held that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and

the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence. In the present case, though the defendants claimed that the suit property was acquired from the joint family funds, they did not discharge the burden so as to shift the burden on the plaintiff to establish that the suit premises is his self-acquired property. The Courts below, however, wrongly applied the test holding that the suit premises was acquired from the funds of the joint family. He also invited my attention to the definition of the expression 'licensee' appearing in Section 7(5) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). He submitted that as the defendants have not established that the suit premises are acquired from the joint family funds, Application requires consideration.

11. On the other hand, Mr. Kulkarni supported the impugned orders and submitted that after appreciating the evidence on record, the Courts below have concurrently held that the suit premises is not the self-acquired property of the plaintiff and that defendants are not the gratuitous licensee. He submitted that burden is on the plaintiff to establish that it is his self-acquired property. The question is whether in the present case, plaintiff has discharged that burden. He submitted that plaintiff has not proved his tenancy of room No.10 of Adam Hasan Chawl. He, therefore, submitted that no case is made out for interfering with the impugned orders.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, plaintiff came with the specific case that he had acquired the suit premises upon surrendering Room No.10 of

Adam Hasan Chawl. The plaintiff has also produced agreement dated 21.12.1983 at exhibit-44. Recital 2A records that **in consideration of the tenant (plaintiff herein) having surrendered his rights in room No.10 situate in Adam Hasan Chawl, S.V. Road, Dahisar (East), Bombay 400 068 of which he is an old tenant and occupier for the development of the said property**, builders have given to the said tenant (plaintiff herein) a premises of one flat bearing No.B-203 on second floor situate at 'Panchvati' in land bearing C.T.S.No.1186, 1187 and 1188 of Village Dahisar situate at S.V. Road, Dahisar (E), Bombay 400 068, **without taking any monetary consideration on ownership basis**. Thus, the case of the plaintiff is that he had acquired the suit premises in lieu of surrendering tenancy rights in room No.10 of Adam Hasan Chawl. He had not paid any consideration to M/s. Shiv Builders. As against this, defendants specifically contended that plaintiff was never tenant of room No.10 of Adam Hasan Chawl. Defendants denied that plaintiff had acquired the suit premises on surrendering his alleged tenancy rights of room No.10 of Adam Hasan Chawl. Defendants specifically asserted that plaintiff was never a tenant or occupant of the alleged room No.10 or any other premises at Adam Hasan Chawl at any point of time nor the suit premises were acquired in lieu of any room at Adam Hasan Chawl as alleged.

13. It is in that context one has to consider the claim of the plaintiff that he has acquired the suit premises of his own by surrendering room No.10 of Adam Hasan Chawl. The learned trial Judge has considered this aspect from paragraph 27 onwards. In paragraph 27, the learned trial Judge has referred to the agreement dated 21.12.1983 at exhibit-44 executed with M/s. Shiv Builders, Share Certificate issued by Panchavati Apartment Co-operative Housing Society Limited dated 01.04.1987, telephone bills, etc. The learned trial Judge observed that

the suit premises was allotted to the plaintiff without any consideration in lieu of surrendering room No.10 in Adam Hasan Chawl. The plaintiff fairly conceded that he had no documentary evidence to show that he had acquired room No.10 from Prajaati. As mentioned earlier, in paragraph 11 of the plaint, plaintiff specifically asserted that one Prajapati was tenant of room No.10. Plaintiff and Prajapati agreed in the year 1982 that the plaintiff would be entitled to the benefits of the tenancy of room No.10. Thus, the contention of the plaintiff that he had no documentary evidence to show that he had acquired room No.10 from Prajapati assumes importance. During the course of cross-examination, plaintiff volunteered that he had rent receipt to show that he had acquired room No.10 of Adam Hasan Chawl, which had been given to M/s. Shiv Builders. The plaintiff however, failed to place these documents on record. He also admitted that he did not have any document showing address of room No.10 as also showing the name of Prajapati in respect of room No.10. He never resided in room No.10 of Adam Hasan Chawl.

14. In so far as the Appellate Court is concerned, in paragraph 22, the Appellate Court noted that the case of the plaintiff is that he is the exclusive and sole owner of the suit premises. As against this, defendants asserted that the suit premises were purchased from the joint family income of the plaintiff and the defendants and that they are not gratuitous licensees. The initial burden, therefore, is on the plaintiff to show that he allowed the defendants to stay in the suit premises as gratuitous licensees.

15. In paragraph 23, the Appellate Court dealt with evidence of P.W.1, who deposed that in the beginning of 1983, their family was residing at Nonga Bharwad Chawl. Though they were all residing

jointly, all brothers and father were carrying on business independently. He had acquired room No.10 in Adam Hasan Chawl from one Prajapati. Even though he had acquired room No.10, he continued to reside at B-14, Chawl No.7 in Nonga Bharwad Chawl with his parents and brothers. M/s. Shiv Builders had entered into agreements for development of the property in which Adam Hasan Chawl was situate, and accordingly, parties entered into agreement dated 21.12.1983. By virtue of that agreement, M/s. Shiv Builders allotted suit premises as an alternate accommodation in lieu of surrendering room No.10 in Adam Hasan Chawl. In paragraph 24, the Appellate Court referred to P.W.1 volunteering during the cross-examination that he had rent receipt to show that he had acquired room No.10, which he had given to M/s. Shiv Builders. He, however, failed to place it on record. He further admitted that he did not have any document to show the name of Prajapati in respect of room No.10. He never resided in room No.10 of Adam Hasan Chawl. He had no documentary evidence to show that he had acquired room No.10 from Prajapati. P.W.1 also admitted that defendants No.1 and 3 are residing in the suit premises from the beginning of acquiring the suit premises. After considering the material on record, the Appellate Court recorded a categorical finding that except his bare words in the plaint, there is nothing to show that one Prajapati was a tenant of Room No.10 at any point of time till he allegedly transferred his tenancy rights to the plaintiff. The plaintiff is not even in a position to disclose who was his neighbour in Adam Hasan Chawl, whether his room No.10 was the last room in Adam Hasan Chawl, whether the other tenants in Adam Hasan Chawl got the alternate accommodation from M/s. Shiv Builders.

16. Thus, the theory of the plaintiff that plaintiffs was allotted suit premises upon surrendering tenancy rights in room No.10 of Adam Hasan Chawl cannot be accepted. The agreement also records that

without any consideration, the suit premises was allotted to the plaintiff upon surrendering room No.10 of Adam Hasan Chawl. Thus, once the plaintiff has failed to establish that he had any connection with room No.10 in Adam Hasan Chawl and that he has surrendered tenancy rights of room No.10, the defence of the defendants that the suit premises was acquired from the joint income and fund of HUF property assumes importance. In that situation, it was obligatory on the part of the plaintiff to establish that the suit premises is his self-acquired property. No such attempt was made by the plaintiff to substantiate the said case. The Courts below, therefore, were justified in dismissing the Suit.

17. Mr. Godbole submitted that the Courts below were not justified in enquiring the source of acquisition of suit premises. It is not possible to accept this submission as basically plaintiff himself came with the case of acquisition of the suit premises upon surrendering room No.10. The plaintiff has failed to establish his connection with room No.10. In view thereof, no case is made out for interfering with the impugned orders. The plaintiff 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. The plaintiff 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. Hence, Application fails and the same is dismissed.

**(R. G. KETKAR, J.)**