

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 661 OF 2019****WITH****CIVIL APPLICATION NO. 429 OF 2019****IN****CIVIL REVISION APPLICATION NO. 661 OF 2019**

Rajendra Vinayak Ghodke

.....Applicant.

Vs.

Swapna Shrikant Avere & Ors.

.....Respondents.

Mr. B.B. Nangare i/by B.B. Nangare & Associates for the Applicant.

Mr. Rahul Behare i/by Rahul Singh for the Respondent No.1.

Mr. Saurabh Oka for the Respondent No.7.

CORAM : A. S. GADKARI, J.

DATE : 11th FEBRUARY, 2020.

PC:-

By the present Revision Application, the Applicant-Original Plaintiff has impugned Order dated 13th June, 2019, passed by District Judge-5, Thane, below Exhibit 5 in Civil Appeal No. 88 of 2019 thereby granting stay to the operation and execution of decree dated 16th March, 2019 passed by the 6th Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No. 393 of 2007 till the final disposal of the said Appeal.

2 Heard Mr. Nangare learned counsel for the Applicant, Mr. Behare, learned counsel for the Respondent No.1 and Mr. Oka for the Respondent No. 7. Perused the record.

3 The record reveals that, the Applicant-Plaintiff had instituted a Suit bearing R.C.S. No. 393 of 2007 in the Court of 6th Joint Civil Judge, Senior Division, Thane, for declaration of tenancy rights in respect of room No. 648/1 and new flat in the newly constructed building and to reserve and keep aside the same after demolishing old building, wherein the father of the Appellant was a tenant.

 The Trial Court, after considering the evidence available on record and after the hearing the parties therein, was pleased to decree the said Suit and declare that, the Appellant alone is entitled to inherit the tenancy in the Suit property and entitled for allotment of the said new flat, in lieu of the Suit premises/tenanted premises in the newly constructed building on the said land as pleaded in the plaint.

4 The Respondent No. 7 is the real sister of the Appellant and was the Defendant No.7 in the said Suit. The Respondent No.1 claims her 1/3rd right in the newly allotted flat in the newly constructed building, being a daughter and legal heir of the deceased Vinayak Ghodke. The Respondent No.8 is the other brother of the Appellant.

 As noted earlier, the Appellate Court has granted stay to the operation and execution of the said decree dated 16th March, 2019 by the impugned Order. *Prima facie*, it appears that, the Trial Court while decreeing the Suit, has erroneously accepted the contention of the Appellant that, he has inherited tenancy rights in the Suit property, though

there are having other legal heirs of the deceased.

5 As the substantive Appeal preferred by the Respondent No.1 is pending for final adjudication and it is the claim of the Respondent No.1 that she is having 1/3rd share in the Suit property through inheritance, the Appellate Court has rightly stayed the operation and execution of the decree dated 16th March, 2019.

Perusal of the impugned order would clearly indicate that, the Appellate Court has not committed any error while passing the impugned Order.

I find no merits in the Revision and is accordingly dismissed.

In view of dismissal of Revision Application itself, Civil Application No. 429 of 2019 does not survive and is also disposed off.

Sanjiv S.
Mashalkar
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by Sanjiv S.
Mashalkar
Date:
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(A.S. GADKARI, J.)