

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 38 OF 2020

Sham S/o Chandumal Sindhi @ Shambhai
Age: 55 yrs, Occu: Business,
R/o Nanak Nagar, Sindhi Colony, Bhusawal,
Tq. Bhusawal Dist. Jalgaon

... Applicant
[Orig. Defendant]

Versus

Pahelraj S/o Chandumal Sindhi
Age: 60 years, Occu: Business,
R/o Nanak Nagar, Sindhi Colony, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon

... Respondent
[Orig. Plaintiff]

....

Mr. P R. Katneshwarkar, Advocate for applicant
Mr. B. R. Kedar, Advocate for respondent

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 30th NOVEMBER, 2021

PRONOUNCED ON : 16th FEBRUARY, 2022

J U D G M E N T :-

. Rule. Rule made returnable forthwith and heard finally with the consent of the learned Advocates.

2. The challenge in this revision application is to the decree dated 12.10.2010 passed by the 3rd Joint Civil Junior Division, Bhusawal in Regular Civil Suit No.138 of 2002 and affirmed by the

District Judge vide his judgment and decree dated 13.12.2019 passed in Civil Appeal No. 270 of 2014. Vide impugned judgment and decree, the applicant herein has been directed to vacate suit premises, a room admeasuring 15 X 15 feet used for commercial purpose. It was a suit for possession and arrears of rent. The suit was filed mainly on the ground of default in payment of rent and *bona fide* requirement. The suit has been decreed on both the counts. The original defendant (tenant) has therefore filed present revision application.

3. Learned Advocate for the applicant would submit that the impugned judgments and decree are perverse one. The admissions given by the landlord (plaintiff) have not at all been considered. There was no iota of evidence to establish landlord - tenant relationship. The learned Advocate took me through the relevant pleadings and evidence as well to ultimately urged for allowing the application.

4. The learned Advocate for the landlord would, on the other hand, submit that it is a concurrent finding of fact based on evidence in the case. The tenant did not enter the witness box. There

was ample evidence to indicate that the land around and beneath the suit premises was granted by the Government to the landlord. The tenant behind the back of the landlord had made an application to the Municipal authorities to get his name recorded in the Municipal record. He has been successful in such attempt. The Municipal record is not a document of title. An official from the Tahsil office was examined in proof of grant of land to the plaintiff. According to the learned Advocate, no case is made out for interference with the impugned decree. He, therefore, urged for dismissal of the application.

5. Considered the submissions advanced. Gone through the relevant pleadings and evidence relied on. The landlord and the tenant, inter se are the real brothers. Even this fact has not been averred in the plaint. The suit premises admeasures 15 X 15 feet. The plaint and evidence of the landlord is also silent to make out the case as to when the applicant was inducted in the suit premises as tenant. Admittedly, except the bare words of the landlord, there is no evidence to establish landlord - tenant relationship. The tenant has all along been denying such a relationship. Unless the onus is shifted to the defendant - tenant, it is not necessary for him to lead any

evidence. He can very well point out the landlord to have failed to make out his case. The suit premises is said to be part and parcel of Municipal house No. 6130 (New No.930). In November 1999, the landlord had issued one notice. Then the said notice was withdrawn. Copy of the said notice is not on record. There are vital admissions given by the landlord that lead this Court to non suit him. Both the Courts below simply relied on the oral testimony of the landlord and evidence in the nature of grant of land by the Government to the landlord. In the Municipal record, house No.930 has been sub-divided into 930 and 930/1. It is not known as to on what basis and material the trial Court held the landlord to have failed to prove that the premises was let out at the rent of Rs.1,000/- per month. The trial Court, without there being any evidence that the Municipal assessment on record shows annual rent of the suit property to be Rs.1,200/-, granted decree for Rs.3,600/- towards arrears of rent for three years. The landlord did not take exception to the decree substantially reducing the quantum by filing appeal or cross objection.

True, the landlord may give up his claim. This, however, speaks in volume. The landlord had admitted to have no evidence to establish landlord - tenant relationship. True, no documentary

evidence is required in proof of such relationship. The evidence on record, however, has to be cogent one. The landlord went on to admit to be unable to read Marathi. He did not get the contents of his affidavit of evidence read over to him. He admitted that the averments in his affidavit of evidence that the tenant has paid him rent upto 31.12.1998 along with Municipal taxes, is not true. The Municipal house owned by the tenant bears No.541/1 (New No.930/1). The tenant is exclusive owner of the Municipal house No.930/1.

6. No doubt, there is evidence on record to indicate that the Government authorities have granted the landlord a piece of land. There is, however, no evidence that the suit premises stands thereon and the same was let out to his brother. The evidence of the landlord in this regard may be true that the tenant was prosecuted for having forged the consent letter under the signature of the landlord and submitted such application to the Municipal authorities for recording his (tenant's) name in the suit premises. He has been acquitted therefrom. The Municipal record in respect of the suit property stands in the name of the tenant as owner. True, it is not a document of title. The landlord, for want of evidence cannot be

heard to say that the Municipal record was changed behind his back. The suit was filed under the Rent Act. There was no alternative prayer for possession on the basis of title. It is reiterated that except the bare words of the landlord, there was no iota of evidence to establish landlord - tenant relationship. On the contrary, the landlord himself admitted the tenant to be the owner of Municipal house No.930/1. On the basis of some application (consent letter) under the signature of the landlord, the Municipal record was changed to the name of the tenant. Both the Courts below have ignored this piece of evidence and even the admission given by the landlord.

7. As such, the decree impugned herein is based on as good no evidence in respect of the landlord - tenant relationship between the two real brothers. On the contrary, the record indicates the tenant to be the owner of the suit premises in Municipal record. Since it is not a document of title, the landlord may file suit for possession on title. Both the Courts below have passed the decree without evidence of landlord - tenant relationship and in ignorance of the evidence and admission that negatives the claim of the landlord. Interference with the impugned decree is therefore called for.

8. In the result, the Civil Revision Application is allowed.
9. The decree dated 12.10.2010 passed by the learned 3rd Joint Civil Judge, Junior Division, Bhusawal in Regular Civil Suit No.138 of 2002 and confirmed by the learned District Judge-3, Bhusawal vide its order dated 13.12.2019 in Regular Civil Appeal No.270 of 2014, is hereby set aside and the Civil Suit is dismissed.
10. Rule is made absolute, accordingly.

[R. G. AVACHAT, J.]

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