

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.326 OF 2022

Deepak Harkishandas Shavadia

..Petitioner

Versus

Kamleshsingh Harnamsingh Chowhan & Ors.

..Respondents

Ms. Snehal R. Modi, for the Petitioner.

Mr. Vivek Kantawala a/w Amey Patil i/by M/s. Vivek kantawala & Co., for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 12th OCTOBER, 2022

PC.

1. The respondent initiated RAE Suit No.957/1502 of 2013 before the Small Causes Court at Bombay alleging that one Pravinchandra, real brother of present petitioner who died in 1975. Based on the provisions of Sub-Section (15) of Section 7 of the Maharashtra Rent Control Act, widow of Pravinchandra i.e. Smt. Manjula was impleaded as defendant, so also one Nagendra as sub-tenant, prayer for eviction was taken out. In the said proceedings, the writ petitioner alleging to be real brother of deceased Pravinchandra stepped in with a prayer for impleadment as being defendant, necessary party to the suit. A prayer for impleadment is based on the succession to the tenancy rights. It is claimed by the petitioner/proposed defendant that the suit premises were sublet to Harkishandas Parmanand Shavadia i.e. father of the present petitioner. It is claimed that Harkishandas Parmanand Shavadia

expired in 2000 whereas wife Chanchal in 2006. It is claimed that by virtue of provisions of clause (d) of Sub-Section (15) of Section 7 of the Maharashtra Rent Control Act, the petitioner becomes user of the suit premises and that being so, he is necessary party to the proceedings for eviction.

2. Trial Court vide order dated 6th January, 2016 has permitted impleadment thereby allowing application Exh.23. In revision preferred by the respondent/plaintiff being Revision No.79 of 2016 the Appellate Court, Small Causes Court at Bombay reversed the aforesaid order impugned dated 30th November, 2019. As such, this petition.

3. Counsel for the petitioner would draw attention of this Court to the provisions of clause (d) of Sub-Section (15) of Section 7 of the Rent Act, so as to claim that the suit premises were tenanted to late Harkishandas Parmanand Shavadia and the petitioner being his legal heir is entitled to continue in the suit premises as a tenant. It is claimed that intermittently petitioner is residing in the suit premises, even if he has alternate accommodation in Pondicherry. Contentions of counsel for the petitioner are, at the time of death of Pravinchandra or father Harkishandas Parmanand Shavadia, petitioner was in possession of the suit premises. It is further claimed that the respondent/plaintiff has suffered a partition decree upto Apex Court in which the suit property has not come to the share of the respondent/plaintiff and

that being so, he cannot be termed as a landlord so as to claim any right as per law in the suit premises. Further contentions are, the suit initiated by the petitioner seeking declaration of tenancy right over the suit property being RAE Suit No.264 of 2017 is already subjudice before the Small Causes Court. It is also urged by Ms. Snehal Modi counsel for the petitioner that the Revisional Court has exceeded its jurisdiction thereby recorded finding that the petitioner is not necessary or appropriate party as the suit claim pertains to landlord-tenant dispute.

4. Counsel for the respondent Mr. Vivek Kantawala would oppose the prayer based on the findings recorded by the Revisional Court. According to him, once the rights of the petitioner as to the succession of the tenancy right of deceased Pravinchandra are subjudice before the competent Civil Court, the Court below was justified in rejecting the prayer. In addition his contentions are, the necessary consequences in case if the suit of the petitioner is decreed will follow.

5. I have appreciated the said submissions.

6. From the appreciation of material available on record, *prima-facie* it can be noticed that the petitioner has failed to demonstrate at this stage of the proceedings that he can be termed as a tenant within the meaning of Sub-Section (15) of Section 7 of the Rent Act particularly when he was not continuously residing after the death of Pravinchandra in the suit property. There is one

more facet to the matter, the petitioner claimed to have offered and paid rent to co-owner i.e. blood relative of the respondent/plaintiff based on the decree for partition passed in Uttar Pradesh. Such right whether the respondent/plaintiff is entitled to succeed to the suit property can be looked into based on the pleadings raised by the petitioner in the parallel suit and not in the present proceedings.

7. Apart from above, this Court is required to be sensitive to the fact that after the death of Pravinchandra in the year 1975, Smt. Manjula his widow succeeded to the tenancy right and as such, she is impleaded as party defendant to the suit.

8. In the aforesaid background, no illegality could not noticed in the order impugned dated 30th November, 2019.

9. As such, present writ petition *sans* merit and same stands dismissed.

10. However, this will not preclude the petitioner for moving before the appropriate Court seeking clubbing of both the suits i.e. suit initiated by the respondent/plaintiff for eviction, so also the suit for declaration preferred by the petitioner as the subject matter of both these suits is same.

[NITIN W. SAMBRE, J.]