

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

CIVIL REVISION APPLICATION NO.18 OF 2021

Chamelidevi Chhedilal Gupta ..Applicant
Versus
Tilak Khetsey Shah
Since deceased through legal heirs
Smt. Sobhana Tilak Shah & Ors. ..Respondents

CIVIL REVISION APPLICATION NO.149 OF 2020

Omprakash Chhedilal Gupta ..Applicant
Versus
Tilak Khetsey Shah
Since deceased through legal heirs
Smt. Sobhana Tilak Shah & Ors. ..Respondents

Mr. Bharat Satra i/by Prakash G. Lad, for the Applicant in both Applications.
Mr. Shravan M. Vyas, for the Respondent Nos.1(a) to 1(d).

CORAM : NITIN W. SAMBRE, J.

DATE : 1st AUGUST, 2022

PC.

1. The revision applicants referred above are the mother and the son, who are occupying the following premises :-

“Applicant in CRA No.18 of 2021 is occupying Room No.24, 1st Floor, Tilak Building, Acharya Donde Marg, Sewree, Mumbai-400 015.

Applicant in CRA No.149 of 2020 is occupying Room No.13, Ground Floor, Tilak Building, Acharya Donde Marg, Sewree, Mumbai-400 015.”

2. The respondents/land owners have initiated RAE Suit Nos.1719 of 2004 and 1720 of 2004 on the file of Small Causes Court, Mumbai alleging that the applicants/tenants have sublet the suit premises to the respondent.

3. The aforesaid RAE Suit No.1719 of 2004 was decreed on 8th September, 2010, whereas RAE Suit No.1720 of 2004 came to be dismissed on 14th September, 2010. The appeals being Appeal Nos.488 of 2010 preferred by the tenant/Smt. Chamelidevi Gupta came to be dismissed, whereas Appeal No.4 of 2011 preferred by landlord/Mr. Tilak Khetsey Shah came to be allowed on 20th January, 2020. As such, both the Civil Revision Applications are preferred by the tenants.

4. The fact that the suit premises are owned by the respondents/plaintiffs is not in dispute. It is specifically claimed in the suit by the respondents/plaintiffs that the respondent No.5 i.e. Ashokkumar Gupta who is respondent No.3 in Revision Application No.149 of 2020 and related to the present applicant/original defendant who was inducted as sub-tenant.

5. The applicants/tenants have assailed the orders of the Small Causes Court, so also the Appellate Court on the ground that

the Appellate Court has committed an error in failing to appreciate the evidence on record. According to them, the necessary ingredients of Section 16(1)(e) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the said Act” for the sake of brevity) were not satisfied and as such, the case pleaded by the non-applicant as that of unlawful subletting of the suit premises by the applicants on licence basis was not established. The oral evidence of the original plaintiff No.2 has not established the aforesaid ingredients. According to him, the findings recorded by both the Courts below that the respondent No.5/3 is in settled possession of the property by virtue of the subletting by the applicants is without any basis or foundation and as such, impugned orders warrant interference. The aforesaid contentions are sought to be established from the evidence of the applicant/original defendant No.1 and the defendant/sub-tenant.

6. The aforesaid claim was resisted by the counsel for the respondents/decreed-holders/plaintiffs, as it is specifically claimed that the suit premises were let out by the applicants to the other defendant i.e. sub-tenant and it is further claimed that the applicant/defendant No.1 has shifted to a different residence. It is claimed that the applicants are profiteering from the subletting of the suit premises. The fact that the present applicant No.1 is related to the sub-tenant who is applicant in another revision is not disputed.

7. The relationship between the defendant Nos.1 and 2 is specifically considered in paragraph 22 of the impugned judgment delivered by the Small Causes Court which is not disputed before this Court.

8. The respondents/plaintiffs have specifically pleaded that the defendant No.1 owns Flat Nos.202 and 505 in Veena Beena Building and has sublet the suit premises to the respondent/defendant No.2 by profiteering i.e. charging exorbitant rent.

9. The applicants have come out with a case that the defendant No.2 is residing at Antop Hill and not in the suit premises. Both the defendants have not entered into the witness box but the defendants/applicants have examined their representatives.

10. The fact that ownership of the aforesaid two flats by the defendant No.1 since was not specifically denied, same stood admitted. Apart from above, the suit summons was issued to the defendant No.2 on the address i.e. the suit premises which was duly received by the defendant No.2 which establishes that he was residing in the suit property.

11. The electoral roll produced at Exhs.E and F expressly establishes that the defendant No.1 i.e. applicant was residing with her husband, four sons and daughter-in-law at Flat No.505 referred above. As against above, the electoral roll Exh.F speaks of the

residence of defendant No.2 in the suit property. Neither the witness of the applicant/defendant No.1 nor that of defendant No.2 could explain the aforesaid public document. The Court is required to be sensitive to the provisions of Section 76 of the Evidence Act which makes the certified copy of a public document admissible. Apart from above, the said document was not disputed by the applicant or the defendant No.2. The only objection raised by the applicant to the document Exh.E i.e. extract of electoral roll is about manipulation of the same by the plaintiffs. Once the applicant/defendant No.1 has accepted the said document and claimed that same was manipulated by the plaintiffs, the burden is on the applicant/defendant No.1 to prove the same which the applicant has failed to. The witness of the applicants has rather given certain admission in favour of the plaintiffs as to failure to explain the service of the notice based on bailiff report Exh.5 at suit premises on the defendant No.2. The said witness has admitted that his father i.e. husband of the applicant/defendant No.1 resides in above referred Flat No.505. As such, it is difficult to believe illogical claim of the applicant that she was residing away from her husband in the suit property in absence of claim and evidence to that effect.

12. As regards alleged claim of failure of the non-applicants/ plaintiffs to demonstrate the receipt of the rent by the applicants from the defendant No.2 is concerned, once it is established and accepted that the applicants and defendant No.2 are in blood relation, it was for the applicants to state that the defendant No.2

was a gratuitous occupant with them which they have failed to. In view of above, drawing support from the judgment of the ***Joginder Soni Vs. Amar Kaur*** reported in ***(2005) 1 SCC 31***, it has to be inferred that the necessary ingredients as regards the case of subletting is duly established by the respondents/plaintiffs as the parting of possession of rental property is duly proved and as regards the receipt of monetary consideration, it is not the case of the defendants that the defendant No.2 is gratuitous tenant.

13. That being so, both these revisions lack merits and same stand dismissed.

[NTIN W. SAMBRE, J.]