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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.353 OF 2022**

Shri Devnath Bhagirathi YadavApplicant.

V/s

Lalta Prasad Yadav & Others Respondents

Mr. Vaibhav Sugdare i/b Ashok Kumar Mishra for the Applicant.

CORAM: NITIN W. SAMBRE, J.

DATE : JULY 29, 2022

P.C.:

1] Applicant/Plaintiff initiated RAD Suit No.118/206 of 2012 before the Court of Small Causes Court, Bandra, Mumbai seeking relief of declaration that he is a joint tenant in the suit property with further mandatory direction to the landlord to issue joint receipt in his favour with other ancillary reliefs. The suit preferred by the Applicant came to be dismissed vide judgment and order dated 28/11/2019, which was confirmed in R-Appeal No.30 of 2020. As such, this Revision.

2] Facts necessary for deciding the Revision are as under:-

3] Bhagirathi, deceased father of the Applicant was blessed with other son viz. Jaynath. During his life time, said Bhagirathi alleged to have executed declaration-cum-affidavit transferring his tenancy rights in favour of his daughter-in-law viz. Sushiladevi being wife of his younger son Jaynath. As a sequel of above, tenancy rights in favour of Jaynath through his wife were recognized. Feeling aggrieved, suit came to be filed.

4] Contentions in the Plaint are, Plaintiff/Applicant being successor/legal heir of deceased Bhagirathi, is entitled for joint tenancy in the suit property and that being so, relief was claimed. Prayer for grant of declaration was opposed by the present Respondents through their Written Statements Exhibit-9 and Exhibit-24. According to them, Exhibit-56 i.e. Affidavit-cum-declaration dated 12/12/2008 in categorical terms transferred tenancy rights in favour of Sushiladevi, daughter-in-law of deceased Bhagirathi. It is further claimed that Exhibit-56 in categorical terms speaks of the no objection of the Applicant to such transfer of tenancy

rights in the backdrop of purchase of independent flat in favour of the Applicant/Plaintiff. Attention of this Court is invited to paras 3, 4 and 5 of the said document Exhibit-56.

5] Both the Courts below have dismissed the claim of the Applicant.

6] While assailing aforesaid judgments, Counsel for the Applicant would urge that it is not permissible to transfer the tenancy rights and such transfer has to be in tune with the provisions of sub-section 15 of Section 7 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to for the sake of brevity as the “said Act”). According to him, Applicant, through oral evidence, has established the fact about he being resident of the suit premises on the date of death of Bhagirathi on i.e. 14/10/2011. He would further urge that Sushiladevi, daughter-in-law of deceased Bhagirathi cannot be termed as legal heir (in Class-I) under Hindu Succession Act and that being so, Courts below committed an error in recording finding that Applicant is not entitled to succeed to the tenancy rights of deceased

Bhagirathi.

7] I have appreciated aforesaid submissions.

8] With the assistance of Counsel for the Applicant, I have also perused the findings recorded by both the Courts below, recitals in the affidavit-cum-declaration Exhibit-56, evidence brought on record including pleadings of rival parties.

9] There is specific recital in Exhibit-56 that deceased Bhagirathi purchased flat in the name of his elder son Devnath i.e. present Applicant/Plaintiff. Accordingly tenancy rights in the suit property where Bhagirathi was residing as tenant were transferred in favour of his daughter-in-law Sushiladevi who was married to his younger son Jaynath.

10] Transfer of such tenancy rights within the provisions of sub-section 15 of Section 7 of the said Act is permissible to the extent of legal heirs irrespective of their class, provided such legal heirs are residing in the suit property. While asserting the claim of being in

possession of suit property on the date of death of Bhagirathi, but for his oral statement, Applicant has failed to provide adequate evidence to infer that he on the date of death of Bhagirathi was in possession of the suit property in the capacity of co-occupier. Rather, once document Exhibit-56 was proved, contents therein categorically speak of the Applicant being given independent flat by deceased Bhagirathi and his intention to pass on tenancy rights in favour of his daughter-in-law.

11] In the aforesaid backdrop, what can be noticed is, both the Courts below were sensitive to the contents of Exhibit-56. On failure of the Applicant to discharge his burden to prove the fact that on the date of death of Bhagirathi, Applicant was in possession of the suit premises, both the Courts below have rightly proceeded to dismiss the suit claim. There is one more facet to the case in hand viz. Applicant herein has failed to demolish very legality of document Exhibit-56 as the said document was not challenged by the Applicant.

12] In the aforesaid backdrop, having regard to the provisions of

sub-section 15 of Section 7 of the said Act, so also oral and documentary evidence, Courts below were justified in rejecting the claim of the Applicant.

13] That being so, no case for interference is made out. Revision Application fails and same stands dismissed.

(NITIN W. SAMBRE, J.)