

K.S. Jadhav

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

CIVIL REVISION APPLICATION NO. 529 OF 2022

WITH

INTERIM APPLICATION NO. 20109 OF 2022

**Ved Prakash Jagga (Deleted) ...Appellants
Through Rajender Ved Prakash Jagga & Ors.,**

Versus

M/s Abdul Kader Ali Mohamed & Co. ...Respondent

Mr. Mayur Khandeparkar a/w Mr. Sajjad H. Patel, Advocate for Appellants.

Mr. A.J. Rizvi, Advocate for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 28th NOVEMBER, 2022.

ORDER :

1. Heard the learned Counsel appearing for the parties.
2. By this Civil Revision Application, the Applicant is seeking quashing and setting aside of the impugned Order and Judgments dated 5th January, 2017 and 12th September, 2022 passed by the Trial Court and the Appellate Bench of Small

Causes Court at Mumbai in Appeal No.86 of 2017 in T.E. Suit No.187 of 2008, granting the decree in favour of the Respondent.

3. The Trial Court of Small Causes had framed the issue raised by the Appellants/Original Defendants viz. “*Whether the Plaintiff proves the landlord tenant relationship in between the Plaintiff and Defendants?*” This was answered in affirmative. In Paragraph 9 whilst deciding this issue, the Trial Court has considered the case of the Respondent/Original Plaintiff that on the basis of Agreement of Lease dated 31st January, 1979 (Exhibit 30), the Original Plaintiff had acquired the suit premises alongwith other plots from the previous landlords on Lease for a period of 98 years. On the other hand, the Defendants have denied that the Plaintiffs were transferred any rights in respect of the suit premises.

4. The Trial court upon considering the rival cases found in favour of the Plaintiff and decreed the suit for eviction. In the impugned judgment and order of the Appellate Court of Small

Causes the aforementioned issue was also framed and in Paragraph 12 thereof whilst determining this issue, the Appellate Bench observed that there is an admission that Agreement (Exhibit 30) is a Lease Agreement of 98 years and given for development as well as for eviction of tenants. It is further observed in Paragraph 16 of the said impugned judgment and order upon considering the judgment relied upon by the Advocates of the Respondent viz. Dr. Ambikaprasad Vs. Md. Alam & Anr., 2015 (4) ALL MR 408 (S.C.) that since the attornment by the tenant is not required, a Notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment. The Appellate Court goes on to hold in Paragraph 17 that as per Agreement (Exhibit 30) and Letter of Attornment (Exhibit 28), the original landlords had given the suit premises and other plots on lease to the Plaintiff for the period of 98 years for the purpose of development. The Advocate for the Plaintiff had given Notice dated 14th April, 1984 to the original Defendant Vedprakash for termination of tenancy on the ground of

additions and alterations on the suit premises. This was responded to by Vedprakash denying additions and alterations and title of the Plaintiff. Thus, the Original Respondent Vedprakash was made aware about the Agreement of Lease dated 31st January, 1979 and Letter of Attornment dated 1st August, 1980 executed by the landlords thereby creating rights and interest in the suit premises in favour of the Plaintiff. The original landlords have not accepted rent from the Original Defendant. The Appellate Court on the basis of the facts and evidence goes on to hold that relationship of landlord and tenant between the Plaintiff and Defendant in respect of suit premises is established on the record. However, in Paragraph 26 of the impugned judgment and order, the Appellate Court has held that in view of the facts and evidence already discussed, documents sought to be relied upon by the Appellants are not relevant for deciding the controversy in the suit. Thus, it is not clear, whether the Appellate Court in fact considered that the Agreement of Lease dated 31st January, 1979 was not a registered document for transfer of the lease to the original

Plaintiff and / or whether the Appellante Court had considered whether the Letter or Attornment dated 1st August, 1980 executed by the landlords creating rights and interest in the suit premises in favour of the original Plaintiff was not served on the Defendants.

5. Under Section 109 of the Transfer of Property Act, 1882, the rights of lessor's transferee is provided as under :

“109. Rights of lessor's transferee - If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the

property leased.”

In considering whether there is a transfer of rights of the lessor to the transferee, it is necessary to consider registration of the document of transfer. Effect of non-registration documents required to be registered is provided under Section 49 of the Registration Act, 1908 as follows :

“49. Effect of non-registration of documents required to be registered.— No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:”

Thus, in order for the document to be a transfer of the lessor's rights in the suit property, it is mandatory for the document to be registered. This is clear from Section 49 as no document required by Section 17 to be registered shall affect any immovable property comprised therein, unless it has been registered. Thus, it was necessary for the Trial Court as well as the Appellate Court to consider the fact that the Agreement of

Lease dated 31st January, 1979 which formed the basis of transfer of the original lessor's rights to the Original Plaintiff in the suit premises was not a registered document. This is apart from the fact that the said Agreement contemplated that a irrevocable Power of Attorney shall be executed in favour of lessee simultaneously with the execution of Agreement to enable the lessee to carry out development work and sell the plots and premises and to represent the lessor before the Government and Municipal Authorities as the case may be.

6. Further, the Power of Attorney though asked to be produced by the original Plaintiff during his cross examination was not produced. Ultimately the Applicant/Original Defendant produced the Power of Attorney before the Appellate Court. In the executed Power of Attorney, it is mentioned in the recitals that *“We have given a license to the said M/s Abdul Kadar Ali Mohamed & Co. to enter upon the said land hereditament and premises for the purposes of developing the said property and for starting the work of construction.”* There is no mention of

the executed Power of Attorney that authority had been given to be Original Plaintiff to collect rent.

7. In my prima facie view, the Trial Court as well as the Appellate Court have failed to give proper appreciation to the documents on record in considering whether the Plaintiff proved landlord – tenant relationship. Further, the Appellate Bench was of the view that the documents sought to be produced by the Appellants in Appeal are not required by this Court to enable it to pronounce judgment or for any other substance cause as provided in Order 41, Rule 27 (1)(b) of the Civil Procedure Code.

8. The decision relied upon on behalf of the original Plaintiff / Respondent herein viz. *Dr. Ambikaprasad Vs. Md. Alam & Anr. (supra)* is not applicable in the present case, considering that in my prima facie view, there has been no transfer of the lessor's right in favour of the transferee. It was held in the above decision that since Letter of Attornment filed by the tenant is not required as attornment by the tenant is not

necessary to confirm valid transfer of the lessor's right in favour of the transferee. This pre-supposes that there has been a valid transfer of the lessor's rights. It has accordingly been held in the said decision that Notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment. Thus, in my prima facie view, considering that both the Trial Court and Appellate Bench of Small Causes have decided the issue as to whether the original Plaintiff was in fact a landlord for collection of rent from the Defendant's without proper appreciation of the documents on record and thus rendering a perverse finding, the Civil Revision Application requires admission. Hence, the following order :

- i) Heard. Admit.
- ii) Call for the Record and Proceeding.
- iii) The learned counsel appearing for the Respondent / Original Plaintiff waives service.

iv) The hearing of the Civil Revision Application is expedited.

v) The implementation and / or execution of the impugned Judgment and Decree dated 5th January, 2017 and 12th September, 2022 of the Trial Court and Appellate Bench of Small Causes at Mumbai in Appeal No.86 of 2017 in T.E. Suit No.187 of 2008, is stayed.

vi) Interim Application does not survive and is disposed of.

[R.I. CHAGLA, J.]