

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

**CIVIL REVISION APPLICATION NO.1138 OF 2014
WITH
CIVIL APPLICATION NO.682 OF 2014
AND
CIVIL APPLICATION NO.683 OF 2014**

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Shri. Ramesh Manaji Mistry & Anr. ..Applicants

Versus

Unknown heir of Shri. Namdeo

Krishnaji Rumde & Anr. ..Respondents

Mr. Javed A. Khan, for the Applicants.

Mr. V. V. Warerkar i/by Warerkar & Warerkar, for the Respondent No.2.

Ms. Tanaya Goswami, AGP for the Respondent No.3.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th OCTOBER, 2022

PC.

1. Heard.

2. The revision applicants/original plaintiffs initiated RAE & R Suit No.568/1033 of 2004 for eviction on the ground of non-user.

3. The said suit came to be dismissed on 22nd August, 2011 vide judgment delivered by Judge, Small Causes Court, Mumbai.

4. The applicants preferred appeal being Appeal No.52 of 2011 which also came to be dismissed on 30th October, 2014. As such, this revision.

5. Counsel for the applicants has made two fold submissions that in support of the pleadings, the applicants have examined themselves and discharged initial burden and it was for the defendants/respondents to establish that the suit premises were being used by them and as such there is no ground to order eviction. His further contentions are, appellate court also committed an error in rejecting the appeal by observing that the suit against the unknown legal heirs is not maintainable. He would invite attentions of this Court to the judgment of this Court in the matter of *The Trustees of the NM Petit Charity Fund Vs. Heirs & Legal Representatives, if any, of late Mr. Jal Minocher Unwala* in *Writ Petition No.12449 of 2015* and submits that the notice is already issued to the Registrar General of this Court in the present matter.

6. Counsel for the respondents would support the order impugned. According to him, since the applicants have failed to establish their case of non-user, both the Courts below were justified in recording finding against the applicants. He would further urge that in absence of error of jurisdiction into the concurrent findings, the revision application is liable to be rejected.

7. I have appreciated the said submissions.

8. Admittedly, suit of the plaintiffs is based on the only pleadings of non-user. Such pleadings are not qualified and the plaintiffs who have examined themselves have only come out with a case of non-user without there being any corroborating evidence. The fact remains that plaintiffs have not examined any other witnesses such as neighbour, postman, employee of the electricity department to establish or justify their case.

9. In the wake of above, the Courts below were justified in recording findings against the applicants of failure to establish the case of non-user.

10. As regards second finding about maintainability of the proceedings against the unknown legal heir is concerned, the Appellate Court, in my opinion, has expressed a view which goes contrary to the aforesaid judgment of this Court. This Court has already taken a view that the legal proceedings against unknown legal heirs are maintainable with certain rider.

11. In the aforesaid background, even if the second submission of counsel for the applicants appears to be having persuasive value having regard to the fact that the applicants have failed to establish case of non-user, both the Courts below have justified recording findings against the applicant of failure to

establish case. That being so, no error of jurisdiction could be noticed.

12. The application as such stands dismissed.

13. In view of dismissal of Civil Revision Application, pending Civil Applications also stand disposed of.

[NITIN W. SAMBRE, J.]