

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.156 OF 2022

Laxman Vyankayya Shirsul
Deceased through L.Rs.

1. Raju Laxman Shirsul
Age : 56 years, Occ: Nil,
2. Ganesh Laxman Shirsul
Age : 43 years, Occ : Business
3. Vyankatesh Laxman Shirsul
Age : 39 years, Occ : Advocate,

All R/o : 784, Malyachi Chawadi,
Near Surana Building, Topkhana,
Ahmednagar.

...Petitioners

Versus

Shankar Vyankayya Shirsul,
Age : 70 years, Occ : Retired,
R/o : Near Raddi Karkhana,
Shrikrushnanagar, Nagar-Kalyan Road,
Ahmednagar.

...Respondent

Ms. Nandini Chittal a/w Mr. Pratik P. Kothari, Advocate for Petitioners.
Mr. Lalitkumar Bansilal Palod, Advocate for the Respondent.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : 10.10.2023

PRONOUNCED ON : 14.12.2023

JUDGMENT :-

1. Being aggrieved by the judgments and decrees of the learned 8th Joint Civil Judge Junior Division, Ahmednagar, passed in R.C.S. No.275 of 2007 dated 12.01.2018 and R.C.A. No.81 of 2018 of

the learned District Judge-4, Ahmednagar dated 23.11.2021, the original defendants (tenants) have preferred this revision application. The present revision petitioners were the defendants, and the respondent was the plaintiff.

2. Brief facts of the case were that the plaintiff and defendant were the real brothers. The plaintiff purchased the suit premises from the erstwhile landlord with his brother Chandrakant. Since 1979, the defendant was inducted as a tenant on the ground floor of the suit premises. He was using the premises for his use. However, the plaintiff was in need of the suit premises bona fide as his family was expanded. The plaintiff requested the defendant to vacate the premises, but he did not vacate. Therefore, the plaintiff had filed the suit for eviction under the Maharashtra Rent Control Act (for short 'M.R.C. Act) on the grounds of the willful defaulter, change in user of the suit premises and reasonable and bona fide need of the suit premises for his expanded family.

3. The defendant contended that he had also shared the consideration for purchasing the suit premises. However, since the plaintiff was his elder brother, the defendant did not object to having the sale deed in his favour. He was also residing in the suit premises before the sale deed in the name of the plaintiff and his other brother Chandrakant. He was never the tenant on the suit premises. He was the co-owner of the suit premises. Since he was residing as a co-

owner, there was no question of paying the rent. The plaintiff has concocted the false story of the landlord-tenant relationship. He was never the tenant of the plaintiff. Therefore, the suit under the M.R.C. Act does not lie. The defendant had also filed the counterclaim contending that he and his family were residing in the suit premises as tenants prior to its purchase by the plaintiff. The plaintiff had no sufficient income from his job at Kinetic Company. The defendant, being the elder brother, contributed the consideration amount. He purchased the suit premises in the name of the plaintiff and his other brother, Chandrakant. He denied the title of the plaintiff from 1980; hence, he has perfected his title by adverse possession. The counterclaim was replied. The claim of the defendant has been specifically denied. He prayed to dismiss the suit.

4. The learned Court of first instance held that there was a landlord-tenant relationship. It was not a family transaction. The defendant did not perfect his title by adverse possession. The defendant was the willful defaulter. The plaintiff is entitled to the possession on the grounds of reasonable and bona fide requirements of the suit premises. It has also been held that in case the decree is denied, the plaintiff would suffer more hardship.

5. Learned counsel for the petitioners would submit that both Courts have made an apparent mistake in law in holding that the plaintiff has proved the landlord-tenant relationship. There was no

written agreement or lease. The landlord's bare words were not sufficient to believe that the defendant was the tenant. Since the defendant denied the landlord-tenant relationship, the Rent Court had no jurisdiction. Not a single rent receipt was produced. As per the M.R.C. Act, the landlord must give the rent receipts. Therefore, the presumption goes against the landlord. The Court of the First Instance has not given legal reasons to believe that the petitioner was the tenant. He submits that the defendant could not be evicted without a landlord-tenant relationship.

6. Per contra, learned counsel for the landlord argued that the father of the parties was a tenant in the suit premises. The plaintiff has purchased the suit premises. His other brother Chandrakant had surrendered his right in the suit premises. There is no material to disturb the two concurrent judgments, as required under Section 115 of the Civil Procedure Code, to interfere and warrant the impugned judgment and decree. He relied on few case laws.

7. The first objection raised by the learned counsel for the tenant was that the decree of eviction under Section 15 was *prima facie* illegal. The statutory notice as required under Section 15 of the M.R.C. Act was not served upon him. By the notice, the landlord determined the tenancy and filed the suit for eviction. For the eviction under Section 15 of the M.R.C. Act, before the suit, the landlord has

to serve the notice of demand of arrears of rent in the manner provided under Section 106 of the Transfer of Property Act, and no suit shall be instituted until the period of 90 days next after the notice of demand of arrears of rent. That means 90 days time is to be granted to the tenant to clear the arrears of rent demanded. If the tenant pays the amount of arrears of rent with simple interest of fifteen per cent per annum claimed in the notice within 90 days from the date of the service of the summons, no decree for eviction shall be passed on that ground. The notice Exhibit-239 does not disclose that 90 days' time to clear the arrears of rent was granted. The said notice was dated 07.04.2007. The suit was filed on 27.07.2007. It is apparent that the suit was filed after 90 days of the notice. Reading the contents of the notice with Section 15 of the M.R.C. Act, the Court is of the view that the notice was not a statutory notice under Section 15 of the M.R.C. Act. No specific demand of arrears was made in the notice, stating that he should pay the same within 90 days of the notice. For the above reasons, the Court is of the view that the eviction under Section 15 of the M.R.C. Act is illegally passed against the tenant.

8. Learned counsel for the petitioners would submit that since the defendant denied and did not accept the plaintiff as landlord and claimed the adverse possession and the co-ownership, the jurisdiction of the Rent Court Act is barred under Section 33 of the

M.R.C. Act. Therefore, the Rent Court had no jurisdiction. The suit ought not to have been entertained under the M.R.C. Act. However, neither Court paid attention to this legal issue.

9. Learned counsel for the landlord submits that barely claiming the co-ownership or adverse possession would not bar the jurisdiction of the Rent Court. It is not the case that the plaintiff disputed the tenancy of the defendant.

10. The definition of the tenant has been discussed elaborately in both impugned judgments and decrees. Though the defendant claimed that he was the co-owner of the suit premises under the premise that he had contributed the consideration, he could not prove the same. The other brother Chandrakant, had also gifted his share to the plaintiff. The reasons assigned for the conclusion to determine the issue of landlord-tenant was correctly discussed with the facts of the case. Both Courts have correctly appreciated the facts and law and held that the defendant was the tenant in the suit premises, and he failed to prove the co-ownership and sharer of the consideration amount and perfected the title by adverse possession. The Courts have referred to the document to establish that the defendant was holding the suit premises as a tenant. The correct inferences have been drawn.

11. The scope under Section 115 of the Civil Procedure Code is limited. To exercise the powers under Section 115 of the Civil

Procedure Code, the revision petitioner should satisfy the Court that the sub-ordinate Court to the High Court had exercised the jurisdiction not vested in it by law or failed to exercise the jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with the material irregularity.

12. The defendant objected to the landlord-tenant relationship, and denied the same; hence, the suit could not be entertained under the rent jurisdiction. Section 33 of the M.R.C. Act provides therefor. Primarily, he claimed the co-ownership, and alternatively, he perfected the title by adverse possession. However, he failed to prove it. The plaintiff established the landlord-tenant relationship. Hence, there is no force in his arguments that the suit was not tenable before the Rent Court.

13. So far as the eviction on the grounds of bona fide requirements is concerned, there was sufficient evidence to believe the bona fide requirements of the landlord. No adverse evidence to disbelieve his case was brought on record. The reasons given by both Courts considering the bona fide requirements were legally correct. The issue of hardship was also considered on the premise that the defendant had acquired or had alternate accommodation at another place.

14. Bearing in mind the powers of the High Court under Section 115 of the Civil Procedure Code, the Court did not find that

the sub-ordinate Courts have exercised the jurisdiction not vested in it by law or have failed to exercise the jurisdiction or acted in exercise of its jurisdiction illegally or with material irregularity.

15. Considering the grounds raised in this revision application with Section 115 of the Civil Procedure Code, the Court does not find substance in the revision application. Hence, the following order :

ORDER

(I) Civil Revision Application stands dismissed.

(II) No order as to costs.

(III) Record and proceedings be returned to the learned Court of first instance.

(IV) Learned counsel for the petitioners requests to stay this order for eight weeks. Learned counsel for the respondent opposed her request. He submits that this is a third judgment against the petitioners. Hence, it would be inappropriate to keep the decree holder waiting from enjoying the fruits of the decrees in his favour. In the interest of justice, the effect and execution of the judgment and decree has been stayed for six weeks from today.

(S.G. MEHARE, J.)