

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

CIVIL REVISION APPLICATION NO. 204 OF 2023

1. Shri Harishankar Dharmraj Mishra,
Adult, Indian Inhabitant of Mumbai,
Aged : 38 years, Occu: Service,
R/o. Room No.18, Dayaram Gangadin Yadav
Chawl, Shivaji Nagar, Near Bhuta High
School, Shahaji Raje Marg, Vile Parle (East),
Mumbai – 400 057.
2. Smt. Nishadevi Dharmraj Mishra,
Adult, Indian Inhabitant of Mumbai,
Age : 30 years, Occu : Housewife,
R/o. Room No.18, Dayaram Gangadin Yadav
Chawl, Shivaji Nagar, Near Bhuta High
School, Shahaji Raje Marg, Vile Parle (East),
Mumbai – 400 057

...Applicants

Versus

1. Smt. Bhanumati H. Yadav
2. Shri. Omprakash H. Yadav
3. Shri. Jaiprakash H. Yadav
4. Shri. Vedprakash H. Yadav
5. Shri. Vijayprakash H. Yadav
All of Mumbai, Indian Inhabitant,
Age and Occu. not known,
R/o. Room No.24, Dayaram Gangadin Yadav,
Chawl, Shivaji Nagar, Near Bhuta High
School, Shahaji Raje Marg, Vile Parle (East),
Mumbai – 400 057.
6. Smt. Asha V. Yadav,
of Uttar Pradesh, Indian Inhabitant,
Age and Occu. not known,
R/o.Gram and Post Inayat Nagar,
Milkipur, Faizabad U.P. - 224 228.

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7. Smt. Saroj Ramkaran Yadav,
of Mumbai, Indian Inhabitant,
Age and Occu. not known,
R/o. Abdul Chawl, Sambhaji Nagar, Sahar
Road, Andheri (East), Mumbai – 400 069.
 8. Smt. Shivkumari B. Yadav,
 9. Smt. Ganpatadevi R. Yadav,
 10. Smt. Dhingudevi R. Yadav,
 11. Smt. Smt. Sangeeta K. Yadav,
All adults, housewives,
R/o. Room No.3, Sharadadevi Chawl,
Prabhat Colony, Santacruz (East),
Mumbai – 400 055
- ...Respondents

Mr. Vikram Garewal i/by Mr. K.S. Dubey for the Applicants.
Mr. E.K. Sasidharan a/w Ms. Ekam Siddiqui for Respondent Nos. 1
to 7.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 27th SEPTEMBER, 2023

PRONOUNCED ON : 3rd OCTOBER, 2023

JUDGMENT :

1. This Civil Revision Application is filed by legal heirs of tenant under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), challenging the concurrent finding recorded by the Judge of the Small Causes Court at Mumbai Bandra Branch in R.A.E. Suit for eviction and the concurrent finding recorded by the

Appellate Court of the Court of Small Causes at Mumbai.

2. Admittedly, one Mr. Dharamraj Mishra was inducted as tenant of Room No.18 situated at C.T.S. No.407, 408 and 409 of Vile Parle village, Tq. Andheri, Mumbai - 400057 (for short 'Suit Premises') by the landlord, Dayaram Yadav, as a monthly tenant.

3. The Original tenant and the Original landlord have died. The Applicant herein are the legal heirs of deceased tenant. The Respondent Nos. 1 to 6, are the legal heirs of Housilaprasad Yadav, who claimed to be the owner and landlord of the suit premises based on a 'Will' of Dayaram Yadav. There is a Letters of Administration in favour of the Respondent granted by this Court in its Testamentary Jurisdiction. A challenge to the grant of Letters of Administration by Respondent Nos. 7 to 11, has failed.

4. In the year 2001 an Eviction Suit being R.A.E. Suit No. 834 of 2001 was filed by the beneficiary in the 'Will' Housingprasad Yadav against the Original tenant, on the ground of arrears of rent.

5. After the defendant filed his written statement, evidence was recorded and after hearing the parties the said suit for eviction was decreed in favour of the plaintiff by Judgment and Order

dated 22nd August, 2019, thereby directing the defendant to vacate the suit premises within 90 days. The defendant challenged the eviction decree by way of an appeal before the Appellate Bench of the Court of Small Causes being Appeal No.164 of 2022. The said appeal was heard and by Judgment and Order dated 18th March, 2023, the appeal was dismissed. Against the concurrent finding of both the Courts, the present Civil Revision Application has been filed.

6. Mr. Vikram Garewal made his submissions on behalf of the Applicant/Original defendants.

7. Mr. Garewal, fairly submitted that as far as arrears of rent are concerned after the Notice dated 10th April, 1999 was received by the Original defendant, no amount was tendered to the plaintiff. So also, no reply was filed to the said notice. Immediately after filing of the suit, no application was preferred for depositing the rent in the Court. Mr. Garewal submitted that his main contention is that the plaintiff are not the landlord of the suit premises. He therefore submitted that if the plaintiff were not able to prove that they are the landlords of the suit premises, a suit for eviction on the ground of arrears of rent was not maintainable. He

submitted that the plaintiffs are claiming to be the owners and landlords of the suit premises based on a 'Will'. Mr. Garewal further submitted that there is no doubt that Letters of Administration was obtained by the plaintiff from this Court, but in the schedule of the said 'Will' there is no mention of the suit premises. Therefore, according to Mr. Garewal, the plaintiff has desperately failed to prove that he is the owner and landlord of the suit premises.

8. Mr. Garewal also submitted that his client the Original defendant was paying rent to the Respondent Nos.7 to 10 who are in fact according to him the legal heirs of Original owner of the land.

9. On the other hand, Mr. E. K. Saseed Haran made submission on behalf of the Respondent (legal heirs of Original plaintiff). He submitted that the grounds of arrears of rent has been duly proved. He submitted that admittedly, the Notice dated 10th April, 1999 was received by the Original defendant. As per the demand made in the notice the rent was not tendered to the plaintiff. No reply was sent to the notice. Therefore, there is no dispute about the demand made by the plaintiff. He further

submitted that after filing of the suit on 10th December, 2001, the Original defendant filed his written statement on 21st July, 2002. He further submitted that the issues were framed on 18th September, 2006. He further submitted that the defendant did not on that day filed any application for tendering the rent in the Court. He submitted that the only argument which was submitted on behalf of the defendant was that the plaintiff is not the landlord/owner of the suit premises. Mr. Sasidharan further submitted that the 'Will' specifically mentioned about the land on which the suit premises is situated. He says that once the plaintiff had obtained Letters of Administration from this High Court, the defendant cannot dispute the ownership of the plaintiff. As in the schedule of the 'Will' there is a specific mention of the land, C.T.S. No. 407, 408 and 409 of Vile Parle village. He submitted that there is concurrent finding of both the Courts against the defendant and this Court should not entertain the present Civil Revision Application, and the same should be dismissed with costs.

10. I have heard both the sides and I have gone through the documents on record.

11. The Advocate for the Applicant/Original defendant has not made any submissions on the issue about 'arrears of rent'. As it can be seen from the proceedings that after issuance of Notice dated 10th April, 1999, the defendant did not come forward to tender rent to the plaintiff. After the filing of the Suit on 10th December, 2001, till the filing of the written statement by the defendant on 21st July, 2002, no application was made before the Small Causes Court for depositing the rent in the Court along with interest.

12. Both the Courts have concurrently heard that the ground of arrears of rent has been proved by the plaintiff and a decree to that effect of eviction has been passed.

13. The only ground argued by the Advocate for the Applicant (Original defendant) is a challenge to the ownership of the plaintiff of the subject suit premises. It is the case of the plaintiff that even though there is a 'Will' in favour of the Original plaintiff executed by the Original landlord, the said suit premises which is on land C.T.S. No. 407, 408 and 409 are not part of the schedule of the said "Will". On going through the 'Will', it can be seen that the land on which the suit structures are situated are part

of the subject Will. Therefore, in my opinion, the defendant could not challenge the ownership of the plaintiff. Both the Courts have held that the plaintiff has proved the relationship of landlord and tenant as the Letters of Administration granted by this Court in its Testamentary Jurisdiction is in favour of the plaintiff. A challenge to Letters of Administration, by Respondent Nos. 1 to 11, has also failed.

14. The argument of the Applicant/Original defendant that they were paying rent to the legal heirs of Original owner of the land, will not hold much water because in the Will itself the Original owner of the land, the testator of the Will has mentioned that his wife has died before him and he has no children from the wedlock. After the death of his wife, he has not married to any other female. Therefore, he is bequeathing his estate to his nephew Housilaprasad. This fact itself shows that there are no Class-I legal heirs of the original owner of the land of the suit premises. This makes sense that the Original owner has by his 'Will' bequeathing his properties to his nephew, who has obtained Letters of Administration, and on that basis filed the present suit for eviction. The Original Respondent Nos. 7 to 11 will have no right to call

themselves as landlord/owner of the suit premises.

15. This Hon'ble Court *Silver Jubilee Dryers and Clears V/s. Hiralal Nemichand Shah*¹, has held that if the Petitioner tenant has denied title of the landlords who had taken over the ownership of the premises. It would thus be clear that denial of title was not *bona fide* it was just to protract the litigation. Both the Courts below have rightly taken a view that in view of the denial of the title tenants had forfeited right of tenancy and plaintiffs were entitled for possession of the suit premises.

16. Supreme Court in the case of *Mranalini B. Shah and Another V/s. Bapalal Mohanlal Shah*², has held that where tenant persistently defaults in payment of monthly rent, Court has no discretion to grant him protection under clause (b) of Section 12(3), even if he pays off the whole arrears of rent at the time of pronouncement of Judgment. So also, Supreme Court in the case of *E. Palanisamy V/s. Palanisamy (Dead) By LRs. and Others*³, has held that benefits conferred by statutory provisions can be enjoyed only if such provisions are strictly complied with and procedure prescribed is followed step by step. Equitable

1 (2006) 6 Mah LJ 840

2 (1980) 4 SCC 251

3 (2003) 1 SCC 123

consideration is not applicable.

17. The Applicants were not able to show any material irregularity in the both the Judgments and Decree of Small Causes Court, hence no warrant to disturb the concurrent findings of fact recorded by both the Courts of Small Causes at Bombay.

18. The Applicant is granted a time of six weeks to vacate the suit premises, subject to Applicant and all adult members of the family of the Applicant filing an usual undertaking within a period of one week from today. The said undertaking should specifically state that they are in possession of the suit premises, and nobody else is in possession of the suit premises, further they will not create any third party interest in the suit premises till the time they vacate the suit premises and hand it over to the Respondent (Original plaintiff). And further in the meantime, they will keep on depositing the agreed rent in the Trial Court. The Respondent is at liberty to withdraw the said amount from the Trial Court.

(RAJESH S. PATIL, J.)