

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.460 OF 2022

Chandrakant Atmaram Lamge ...Applicants
(Since deceased)
1. Adesh Chandrakant Lamge & Anr.

V/s.

Sonu Sakaram MalapRespondents
(Since deceased)
1. Smt. Sunita Sonu Malap & Anr.

Mr. Nitin V. Gangal a/w Ashok D. Kadam, for the
Applicants.

CORAM : MADHAV J. JAMDAR, J.
DATE : 27th JANUARY, 2023

P.C.:

1. Heard Mr. Gangal, learned counsel appearing for the
Applicants.

2. The challenge in this Civil Revision Application is to the
Judgment and Decree dated 6th February, 2020 passed by
the Appellate Bench of Small Causes Court at Mumbai in
R.A.D. Appeal No.12 of 2011 along with Cross Objection No.9
of 2011.

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3. By the Judgment and Decree dated 13th January, 2011 passed by the learned Judge, Small Causes Court at Mumbai in R.A.D. Suit No.1680 of 2003 the suit was dismissed. The said suit was filed by one Sonu Sakaram Malap contending that Sakaram Goura Malap was a tenant in respect of suit premises and after his death, the Plaintiff has become the tenant in view of the provisions of the Maharashtra Rent Control Act, 1999. During the pendency of the said suit the original Plaintiff passed away and his heirs i.e. Respondent Nos.1 and 2 were brought on record. The suit premises ad-measures about 84.32 sq.ft. The said suit was dismissed on the ground of limitation, although, finding is recorded that, the Plaintiff No.1 i.e. widow of original Plaintiff is entitled for tenancy rights. Therefore, the Plaintiff filed R.A.D. Appeal No.12 of 2011 challenging the said finding regarding tenancy. The Defendants have filed Cross Objection No.9 of 2011.

4. By the impugned Judgment and Decree of the learned Appellate Bench, Small Causes Court at Mumbai, the R.A.D. Appeal No.12 of 2011 was allowed and Cross Objection No.9 of 2011 was dismissed and it was declared that Sunita Sonu

Malap (wife of deceased Plaintiff No.1-Sonu Sakaram Malap) is tenant of the suit premises.

5. The learned Appellate Court has held that, said Plaintiff has proved that the said Sakaram Goura Malap was the tenant and, therefore, original Plaintiff-Sonu Sakaram Malap i.e. son of Sakaram Malap was entitled for tenancy rights in accordance with Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 and after his death his widow is entitled to the same, as there is no dispute between the heirs of the tenant.

6. It is the main contention of the Plaintiffs that, their tenant was 'Sakaram Goura' and not 'Sakharam Goura Malap'. However, both the learned Trial Court as well as learned Appellate Court have concurrently found that, Sakaram Goura Malap was the original tenant and after his death, his son original Plaintiff-Sonu Sakaram Malap has become tenant.

7. Mr. Gangal, learned counsel appearing for the Applicants has not pointed out any perversity in the said finding recorded by the learned Trial Court as well as the learned Appellate Court. His only contention is that, the suit

for declaration of tenancy rights filed by the Plaintiffs on 30th August, 2003 is barred by limitation. The learned Trial Court has dismissed the suit on the ground of limitation. While reversing the said finding, the learned Appellate Court has held that, the relation between the tenant and the landlord is governed by the provisions of the Maharashtra Rent Control Act, 1999 and, therefore, there can only be two modes of extinguishing the tenancy rights. First is by an express surrender of tenancy by a tenant and another is by a decree of competent Court.

8. The learned Appellate Court has held that, the tenancy has not come to an end in this case and, therefore, there is no question of suit for declaration as tenant being barred by limitation.

9. The relevant discussions of the learned Appellate Court is in paragraph Nos.24 to 26 of the Judgment of the learned Appellate Court which read as under :

"24. The relationship between the plaintiff/tenant and defendant/landlord is governed by the provisions of Maharashtra Rent Control Act, 1999. Once such relationship is governed by the Maharashtra Rent Control Act, 1999 there can only be two modes of extinguishment of tenancy

rights. The first is by an express surrender of tenancy by a tenant which is not the case in hand. The second mode of extinguishment of tenancy is by a decree of competent Court. In **V. Dhanpal Chettiar v/s. Yesodai Ammal, AIR 1979 SC 1745**, the Constitution Bench of the Supreme Court has clearly held that in respect of the premises governed by the Bombay Rent Act, 1947, the tenancy does not get terminated even by issuance of a notice of termination of tenancy and can come to an end only by a decree of a competent Court. This legal position is well established. **Dhanpal Chettiar** judgment is followed in the case of **Pius Bonaventure Fernandes vs Manu Narang (deceased) and ors. [2012(2) Bom.C.R.245]** as relied by the plaintiff.

25. It is clear from the aforesaid judgment that protected tenancy comes to an end by two methods, one is by decree of the court and another is by surrender. In this case, defendants have not produced anything on record to show that they have obtained a decree against plaintiff or his predecessors seeking eviction from the suit premises or plaintiffs have surrendered the suit premises to the defendants. The law of limitation is applicable, when the right of tenancy is specifically denied by the landlords. In this case, though plaintiff on several occasions requested and also written letters to defendant requesting

him to accept rent and issue the rent receipts. But, there was no reply from the defendants in writing denying the tenancy rights of the plaintiffs. Plaintiff has specifically mentioned in the plaint that in the year 2003 defendants threatened him to remove from the suit premises. This in our opinion is the cause of action to file a suit. Therefore, the suit is very well in a period of limitation.

26. In this case, for the first time defendants specifically denied the tenancy right of the plaintiffs when they filed written statement denying relationship of landlord and tenant between them. Therefore, we hold that suit filed by the plaintiff is well within the period of limitation. Plaintiff who could not evict defendants by seeking decree from the competent court cannot take shelter of limitation act to deny the tenancy rights to the plaintiff. Thus, we hold that suit is well within limitation. Accordingly, point No.2 is answered in the affirmative."

10. There is no illegality or perversity in the approach of the learned Appellate Court. Both the Courts have held that, father of original Plaintiff was the tenant and, therefore, held that, Plaintiff is the tenant of the suit premises. The Trial Court has only dismissed the suit on the ground of limitation.

The learned Appellate Court has given very valid reasons for holding that the suit is within limitation.

11. Therefore, there is no substance in the present Civil Revision Application.

12. The Civil Revision Application is dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)