



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

CIVIL WRIT PETITION NO. 9224 OF 2022

Lakkundi Hayavadana Rao

... Petitioner

v/s.

Suresh Baburao Pai

.... Respondent

WITH

CIVIL WRIT PETITION NO. 9271 OF 2022

Lakkundi Hayavadana Rao

... Petitioner

v/s.

Suresh Baburao Pai

.... Respondent

Mr. P.G. Lad for the Petitioner.

Mr. Jamshed Mastee i/b. Ms. Natasha Bhot for the defendants.

Ms. Gauree Suresh Pai, POA holder for the defendants.

Mr. Jayesh Kalyanji Shah, POA holder of the Petitioner.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th OCTOBER, 2023.

P. C. :-

. The Petitioner, the brother of the original tenant, has filed these Petitions under Article 227 of the Constitution of India challenging the judgment and order dated 05/04/2022 in R.A.E. Suit No.1889/2007 and R.A.E. Suit No.1060/2008.

2. Learned counsel for the Petitioner and the Respondent state that both the parties have settled the dispute amicably. They have placed on record Consent Terms signed by the Petitioner as well as by the

Power of Attorney holder of the Petitioner and the Respondent who have been duly authorized to enter into compromise and file consent terms. Copy of the special POA as well as general POA is placed on record. The Consent terms read thus :-

“ 1. The Petitioner, Lakkundi Hayavadana Rao, adult Indian Inhabitant, resident of Bangalore has filed the above proceedings claiming to be the legal heir and Representative of the deceased Defendant in the original Suit, Ms. Rama P. Rao.

2. The Plaintiff had filed suit No RAE 1889/07 vide his Plaint dt 27/11/07 against the now deceased original Defendant tenant (Ms. Rama P. Rao) inter alia on the following grounds: (i) That the Defendant was the lone occupant and had not been in occupation of the suit premises, (ii) That additions and alterations were being carried out in the suit premises, (iii), That waste and damage was caused to the suit premises, and (iv), Bonafide requirement of the Plaintiff.

3. The Plaintiff was compelled to file a second suit against the original Defendant (Ms. Rama P. Rao) being RAE 1060/08 vide Plaint dt 17/4/08, as by that time the said Ms. Rama P. Rao had abandoned the suit premises and had shifted to Bangalore permanently where she settled in an ownership premises. The 2nd suit was therefore filed on the grounds of non-user for the purpose for which the premises had been let out to her, and waste and damage. The Defendant Ms. Rama P. Rao died at Bangalore on 12th August, 2014;

4. Vide order passed in Writ Petition No 8680/15 and 8681/15 impugning the judgement and order passed by the Trial Court

dated 1st August, 2015 this Honourable Court permitted the Petitioner herein to lead evidence before the Honourable Trial Court for the purposes of conducting an enquiry as contemplated under Order 22 Rule 5 of the Civil Procedure Code, 1908.

5. Accordingly, the Petitioner herein led evidence before the Honourable Trial Court and was extensively cross examined.

6. On the arguments advanced before the Trial Court upon completion of the evidence led by the Petitioner herein, the Trial Court came to the conclusion by its Judgement and Order dated 5th April, 2022 passed below Exhibits 71 & 72 that :-

- a. The Petitioner herein is not the legal representative of the deceased Defendant.*
- b. The honourable court disposed of Exhibit 71 with directions to the plaintiff to implead Registrar of the Hon'ble Small Causes Court as party Defendant to be appointed to represent the estate of the deceased Defendant that is tenancy rights for the purpose of the suit.*
- c. Accordingly the Plaintiffs have brought on record as Defendant Number 1a in the Suit the Registrar, Small Cause Court, Mumbai 400002.*

7. Subsequent to the filing of the present two Writ Petitions, the parties have amicably settled their disputes and differences on the following terms and crave leave of this Hon'ble Court to take the present terms on record, accept the undertakings therein as undertakings to this Hon'ble Court and Order accordingly.

- a. That the Petitioner shall hand over quiet, vacant and peaceful possession of the suit premises to the original Plaintiff, Respondent herein and surrender all his rights in full and final settlement upon the Plaintiff paying the Petitioner herein a sum of Rs. 30,00,000/- in full and final settlement.*

b. The Petitioner herein admits and undertakes to this Hon'ble Court that neither shall he, nor shall any other family member, employee, assign, agent or otherwise claim any right, title or interest in the suit premises through or under him.

c. The Petitioner herein undertakes and indemnify that he has not at any time created any permission, right, license, sub-tenancy in respect of the suit premises or any portion thereof and that no person has any right over the suit premises.

d. That the Petitioner herein has this day accepted from the original Plaintiff a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) by way of compensation as and by way of full and final settlement in respect of the above suit matters against handing over the charge/possession of the suit premises to the original Plaintiff. The Petitioner herein undertakes to this Hon'ble Court that this handing over of possession shall be treated as a valid, binding and subsisting surrender of all rights and interests in the suit premises more particularly Flat No. 3, Radha Krishna Niwas, 76 Dadar Matunga Estate, Hindu Colony Road No. 2, Dadar Mumbai 400014 in favour of the original Plaintiff i.e. the Respondent herein.

e. In light of the undertakings given above, the present Consent Terms shall act and be enforceable as a conclusive decree in favour of the original Plaintiff. Drawing up a formal decree is dispensed with. ”

3. Mr. Jayesh Kalyanji Shah, the power of attorney holder of the Petitioner and Ms. Gauree Suresh Pai, Power of Attorney holder of the Respondents who are identified by their respective counsel, are present before the Court. They have identified their signatures on the consent terms and confirmed the contents of the consent terms. The consent terms are taken on record and marked as 'X' for identification.

4. The attorney of the landlord has admitted having received possession of the tenanted premises from the Petitioner. The power of attorney holder of the Petitioner admits having received Rs.30,00,000/- from the landlord. The statements made by the respective parties are accepted. Both Writ Petitions stand disposed of as per the consent terms. R.A.E. Suit No.1889/2007 and R.A.E. Suit No. 1060/2008 stand decreed in terms of the consent terms.

5. The Registrar of Small Causes Court, Dhobi Talao, Mumbai who was appointed by the Court to represent the estate of the deceased, stands discharged.

(SMT. ANUJA PRABHUDESSAI, J.)