

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

**REVIEW PETITION NO. 1 OF 2024
IN
FIRST APPEAL NO. 1531 OF 2019**

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Abdul Kadar Abdul Matin Siddique Since ... Petitioners.
Deceased Through
1. Farid Abdul Kadar Khan And Ors.

Vs.

Sakinabi Abdul Matin Siddique And Ors ... Respondents

Adv. Sagar P Batavia for the Petitioners.
Adv. Santosh Parad, for the Respondent/MCGM.

CORAM : KISHORE C. SANT, J.

DATE : 15th FEBRUARY, 2024

PC.:-

1. Heard learned Advocate for long time. This Review Petition is filed seeking review of the Order dated 20th January, 2020 in First Appeal No. 1531 of 2019 with Civil Application No. 3558 of 2011 passed by this Court, dismissing the First Appeal of the Applicant.

2. It is the case of the Applicant that, he succeeded the right in the tenancy of his grand-father along with his father, two brothers and mother. He had therefore filed suit in the City Civil Court, Bombay for Declaration that he has right in the suit premises admeasuring 10' x 15' sq.ft being son of the tenant.

3. The learned Trial Court on evidence held that the Plaintiff had no right as a tenant in the property. The Trial Court considered that admittedly it was a case that the Plaintiff and one other brother left the said premises and started residing at some other place. Thus as per the admitted position after the death of the tenant and the prior to the death of tenant, the Plaintiff had already left the premises. Brother and mother were staying with the tenant. The property thereafter went in re-development. In view of re-development agreement came to be executed in favour of mother of the Plaintiff for permanent alternative accommodation on 29th January 2007. The Trial Court thus held that the Plaintiff failed to prove his tenancy right to the property and dismissed the suit.

4. The Applicant therefore filed First Appeal in this Court, this Court after hearing the parties was pleased to hold that the Plaintiff failed to prove his right. The Court also recorded that the Defendant Nos. 1 to 3 had proved that the Plaintiff was already allotted share during life time of father and the Plaintiff has relinquished his alleged share in the suit premises. The Trial Court's findings thus re affirmed in the Appeal.

5. The learned Advocate strenuously argue that by suppressing a document i.e. agreement dated 29th January, 2007 in the order in the First Appeal was passed. He thus submits that there is error apparent on the face of record. This Court finds that, this Court by observing in para 15 that the defendant Nos. 1 to 3 had proved that Plaintiff was already allocated a

share and he had relinquished his alleged share in the suit premises has only affirmed the finding already recorded by the Trial Court. This Court does not find that, it can be seen to be an error apparent on the face of record. Even suppression of the so-called will with not in any way establish right of the Plaintiff/Present Applicant over the suit property. Thus there is no point is neither shown the finding which is re-affirm by this court was not recorded by the Trial Court. The only case is made out is that the Trial Court had recorded a finding only on the basis of oral evidence adduced by the Defendants and there was no proof to show that there was relinquished share. All considering the Judgment this Court finds that the Trial Court had also recorded that the Plaintiff had left the premises and has starting residing at some other place and that position was admitted by the Plaintiff.

6. Thus this Court finds that this fact is appreciated by the Court there is no question saying that there is error was place on record. All the reasons recorded this courts finds that no interference is required and the Review Petition is deserves to be dismissed. The same is dismissed. No order as to costs.

(KISHORE C. SANT, J.)