

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 125 OF 2024

Smt. Shila Mahadev Dalvi And Ors	...Applicants
Versus	
Prakash Keshav Chitnis (deceased) Thr. Lrs.	
1a) Smt. Jyoti Prakash Chitnis And Ors	...Respondents

Adv. G. H. Keluskar for the Applicant.

Adv. Prasad Kulkarni a/w. Adv. C. S. Patil for the Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 19 MARCH 2024

P.C.:

1. This Civil Revision Application challenges concurrently findings recorded by the Trial Court and Appellate Court.
2. The Applicants are original defendants and the respondent are original plaintiffs in the eviction suit filed under the Maharashtra Rent Control Act. For the sake of convenience, the parties are hereafter referred to as per their nomenclature in the Trial Court.

3. The plaintiff being an owner of the suit premises which is house No.88 (Municipal House No.338), situated at Sawantwadi. The suit filed against the defendant being Regular Civil Suit No.67 of 2011 for possession on the basis that the defendant No.1's husband one Mahadeo Dalvi was gratuitous licensee of the plaintiff. It was submitted that an eviction notice was addressed to the defendant. A reply was sent by the defendant to the said eviction notice, thereby only denying the contents of the notice.

4. Since the defendant did not evict the suit premises, the plaintiff filed suit for eviction against the defendant. The defendants entered appearance, but only defendant no.2 filed his written statement. Defendant no.1 and 3 chose not to file written statement and did not enter into the witness box, therefore the suit proceeded exparte against the defendant No.1 and defendant No.3. The defendant No.2 in his written only denied the contents of the plaint and no stand was taken that the defendant has any other rights in the suit premises. The plaintiff lead his evidence. The plaintiff entered into the witness box. Learned counsel for the defendant no.2 cross-examined by the plaintiff, after which the

plaintiff closed his evidence. On behalf of the defendant no.2 entered into the witness box so also his sister Hemangi entered into the witness box. Both the witness of the defendant no.2 were cross-examination by the plaintiff.

5. The Trial Court by its judgment and order dated 21 July 2014 decreed the suit for possession of the plaintiff. Being dissatisfied the defendant No.2 preferred an appeal before the District Court. The said appeal of defendant no.2 was dismissed by the judgment and decree dated 19 November 2019, passed by the District Court, Sindhudurg.

6. Against the concurrent findings recorded by both the courts the present civil revision application is filed under Section 115 of the Code of Civil Procedure by defendant no.2 along with the delay condonation application after the delay was condoned in filing the civil revision application and after passing of the judgment and decree by the Appellate Court, almost after four years the present Civil Revision Application is being heard for admission.

7. Mr. Keluskar, appearing for the original defendant no.2 submitted that the defendants were staying in the suit premises

from the year 1940. He submitted that the relation between the parties very cordial until the eviction suit was filed in the present proceeding. He submitted that there is no case to prove by the plaintiff of gratuitous licensee. He submits that the plaintiff and defendant are closely related to each other. Therefore, according to Mr. Keluskar, the present civil revision application will require consideration.

8. Mr. Kulkarni appeared on behalf of the landlord and made his submission, Mr. Kulkarni took me through the plaint paragraph no.13 where it is specifically averred about the defendant be a gratuitous licensee so also took me through the cross-examination of DW-1 wherein there is an admission by DW-1 that defendants were gratuitous licensee of the original plaintiff, and they did not pay any rent. He submitted that once the defendant themselves admitted that they did not pay rent of the suit premises therefore, the case of the plaintiff and defendant being gratuitous licensee is proved and hence, the Trial Court and the Appellate Court decreed the suit of the plaintiff. He submitted that the civil revision application has been filed but, the applicant did not take any steps to take the matter on board for admission.

He submits that the civil revision application should not be entertained and the same should be dismissed with cost.

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

10. In the cross-examination recorded of DW-1 on 21 June 2013 there is a specific admission that the father of the defendant was not a tenant of the original plaintiff. It is further stated that the father of the defendant was staying in the suit premises without paying any kind of consideration. So also, to a question put to him in evidence by the learned counsel for the plaintiff, the DW-1 admitted that the father of the defendant did not pay any kind of rent to the plaintiff. After the plaintiff had issued notice before filing the suit, the defendant filed their reply to the notice and the said notice reply, there was no defense of the defendant that they are paying any kind of rent to the plaintiff. Similarly, written statement filed by the defendant no.2 also does not mention that they are paying rent of the suit premises to the plaintiff.

11. According to me, once the defendants in their reply notice and in their written statement have not taken up stand as to

whether there are tenant protected under the Rent Act by they paying rent to the plaintiff. The case of the plaintiff gets proved that defendant was gratuitous licensee. The plaintiff himself steps into the witness box and in the examination of the Plaintiff and cross examination it has been proved, that the plaintiff is closely related to the defendant and defendant is a gratuitous licensee. Even in the cross-examination defendant had admitted that he is not paid any kind of rent to the plaintiff and he was staying in the suit premises free of charge.

12. Taking into consideration the evidence recorded and the pleadings. I am of the view that there is no infirmity in the concurrent findings recorded by the both the courts. Hence, civil revision application fails. The Civil Revision Application is dismissed with no cost.

(RAJESH S. PATIL, J.)