

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.412 OF 2024**

Satish Gurunath Berde

*....Applicant***V/s.**

Narendra Vithaldas Carpenter (since deceased)-

1(a) Taraben Narendra Carpenter
(since deceased, deleted)1(b) Vijay Narendra Carpenter and
Ors.*....Respondents*

Mr. Ajit N. Jakhadi *i/b. Mr. Amol Anant Chile for the Applicant.*

CORAM : SANDEEP V. MARNE, J.**Dated : 14 August 2024.****P.C. :**

1) Challenge in the present Revision Application is to the judgment and order dated 29 June 2024 passed by the Appellate Bench of the Small Causes Court rejecting E. Appeal No.93 of 2022 and confirming the order dated 3 February 2022 passed by the Executing Court in Obstructionist Notice No.2 of 2016.

2) I have heard Mr. Jakhadi, the learned counsel appearing for the Revision Applicant and have considered the submissions canvassed by the him.

3) It appears that suit came to be decreed on 7 February 2015 directing Defendant Nos.1(a), 1(b) and 3 to handover possession of the suit premises to the Plaintiffs. The suit premises comprise of the following structure:

‘A pucca structure admeasuring 10 ft x 8 ft together with open space in front of and adjoining the said shop, admeasuring 18 ft x 10 ft in Plaintiffs’ compound on the ground floor of Ratna Kunj, 95, Bulsroy Colony Road, Vakola Bridg, Santa Cruz (East), Mumbai-400 055.’

4) It appears that when the Bailiff went to execute the decree, the Revision Applicant claimed rights in respect of Pan Bidi shop claiming that the structure in his occupation is not covered by the decree dated 7 February 2015. Accordingly, the Plaintiff was required to take out Obstructionist Notice No.2 of 2016 under the provisions of Order XXI Rule 97 of the Code of Civil Procedure, 1908. The Obstructionist Notice came to be made absolute by the Executing Court by order dated 3 February 2022. The order of the Executing Court has been confirmed by the Appellate Bench by judgment and order dated 29 June 2024.

5) So far as the first objection of the structure in possession of the Revision Applicant not being covered by the decree is concerned, both the Courts below have concurrently held that the structure being Azad Pan Bidi Shop in possession of Revision Applicant forms part of the suit premises described in the plaint.

6) So far as the independent right of the Revision Applicant in the structure in his occupation is concerned, perusal of the orders passed by both the Courts below would indicate that no satisfactory evidence was

produced by the Revision Applicant to establish his independent right. On the contrary, it appears that the Revision Applicant took contradictory stands. In his reply to the Obstructionist Notice, he pleaded that his father was conducting business of Pan Bidi from 1979 till 15 February 2008. However, he contradicted himself by raising a plea that he had purchased the said pan-bidi shop from one Mr. Tavade in the year -2006. Both the stands are thus clearly contradictory. Furthermore, no documents are produced on record to prove purchase of the said shop from Mr. Tavade in the year 2006. It has also come on record that Revision Applicant shied away from cross-examination and remained absent thereby preventing the decree holder from completing his cross-examination.

7) Considering the overall conspectus of the case, in my view, Revision Applicant could neither establish that the structure in his occupation is not covered by the decree nor he established any independent right in respect of the suit structure. Orders passed by the Small Causes Court and its Appellate Bench therefore do not suffer from any palpable error for this Court to exercise jurisdiction under Section 115 of the Code.

8) Revision Application is accordingly rejected.

[SANDEEP V. MARNE, J.]