

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.467 OF 2024
WITH
INTERIM APPLICATION NO.11968 OF 2024
IN
CIVIL REVISION APPLICATION NO.467 OF 2024

Ramchandra Dyanu Mane
V/S

....Applicant

Ghanshyam Bramdeo Yadav & Anr.

....Respondents

Mr. Sujeet Kurup *for the Applicant.*
Mr. Abhishek Kulkarni *for Respondents.*

CORAM: SANDEEP V. MARNE, J.
DATE : 11 SEPTEMBER 2024.

P.C.:

1 The Applicant has invoked revisionary jurisdiction of this Court under provisions of section 115 of the Code of Civil Procedure, 1908 to set up a challenge to concurrent decrees of eviction passed against the Applicant by the Small Causes Court and its Appellate Bench.

2 Plaintiffs instituted RAE & R Suit No.2071/2111 of 2018 seeking eviction of the Defendant pleading that Plaintiffs are the landlords and Defendant is the tenant. The suit was contested by the Defendant raising a defence *inter alia* that Plaintiffs are not the landlords in respect of the suit premises. Defendant contended that Plaintiffs did not produce any document to prove that they have inherited the suit property from late

Ramdas Govindrao Yadav. The suit was also defended in respect of other grounds of default, destruction/permanent injury to the suit premises, *bonafide* requirement and non-user. The Trial Court decreed the suit by judgment and order dated 26 February 2021 holding that the Plaintiffs proved that they are the landlords in respect of the suit premises. The defence of non-maintainability of suit for want of prior permission under section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment Act, 1971 (**the Slum Act**) was also rejected. The Small Causes Court accepted the grounds of default in payment of rent and *bonafide* requirement. The grounds of causing of destruction/permanent injury under section 108(o) of the Transfer of Property Act, 1882 as well as the ground of non-user were however rejected. The Small Causes Court therefore proceeded to pass a decree for eviction of the Defendant from the suit premises. The Appellate Bench of Small Causes Court has dismissed Appeal No.143 of 2021 filed by the Defendant/Tenant.

3 I have heard Mr. Kurup, the learned counsel appearing for Revision Applicant and Mr. Kulkarni, the learned counsel appearing for Respondents/Plaintiffs.

4 The sheet anchor of submissions of Mr. Kurup is that Plaintiffs are not the owners in respect of the suit premises and relationship of landlord - tenant does not exist between the parties. According to Mr. Kurup, Mr. Jerom Domnic D'Cohna is the real owner in respect of the suit premises and that the premises were taken on rent from Mr. D'Cohna and not from the grandfather of the Plaintiffs. Alternatively, he would submit that even if it is assumed that Shri Ramdas Yadav was the owner in respect

of the suit premises, there is nothing on record to indicate that Plaintiffs are grandsons of the said Ramdas Yadav. He would submit that Revision Applicants have filed Interim Application (Stamp) No.11968 of 2024 for the purpose of adducing additional evidence under provisions of Order 41, Rule 27 of the Code with which voluminous additional documents are sought to be produced to prove that the Plaintiffs are not the owners in respect of the suit property. He would submit that Plaintiffs did not produce a single document to demonstrate their ownership in respect of the suit premises.

5 In my view, in a suit filed for recovery of possession of tenanted premises, it is not necessary for Plaintiff to prove that he is the owner in respect of the suit premises. What needs to be established is mere existence of landlord-tenant relationship. This position of law is well settled by catena of judgments of the Apex Court. A quick reference in this regard can be made in judgment in *K.D. Dewan vs. Haribhajan S. Parihar*¹ the Apex Court has held in paragraphs 6, 7 and 8 as under:

“6. The short question that arises for our consideration is, what is the import of the word “landlord” in clause (c) of Section 2 of the Act and whether the respondent has rightly been held to be the landlord and entitled to seek eviction of the appellant.

7. The said provisions reads as follows :

" 2.(c): 'landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;"

8.A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord : (1) any person

1 (2002) 1 SCC 119.

for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sublets any building or rented land in the manner authorised under the Act and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of “landlord”, Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). **To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner.** It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.”

(emphasis added)

6 The judgment in *K.D. Dewan* (supra) had been followed by the Supreme Court in *R.S. Grewal and others vs. Chander Parkash Soni & Anr.*², in which it is held in paragraphs 17 and 18 as under:

“17. This submission cannot be accepted both as a matter of first principle and having regard to the precedent on the subject. The expression ‘landlord’ is defined in Section 2(c) of the East Punjab Urban Rent Restriction Act 1949 thus:

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context –

* * *

(c) ‘**landlord**’ means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person, from time to time, deriving title under a landlord;”

18. **A landlord within the meaning of Section 2(c) is not necessarily the owner of the property.** The definition of the expression ‘landlord’ is relatable to an entitlement to receive rent in respect of any building or

² (2019) 6 SCC 216.

rented land. The inclusive definition of 'landlord' under Section 2(c) would take in its sweep Shiv Dev Kaur who held a life interest in the property. This position in law has been explained in a decision of a two Judge Bench of this Court in *K.D. Dewan v Harbhajan S. Parihar*, where it was held thus:

XXXX

XXXX

(emphasis added)

7 Therefore all that was required to be pleaded and proved by the Plaintiffs is that relationship of landlord-tenant exists between the parties in respect of the suit premises. Though Defendant sought to raise contradictory defences with regard to ownership of the suit premises, it transpired during the course of trial that Defendant had filed RAN Application No.586/SR of 1986 against Shri Ramdas Yadav for fixation of standard rent in respect of suit premises. The said Application was filed on a presumption that Defendant is a tenant of said Shri Ramdas Yadav. Thus existence of landlord-tenant relationship was accepted by the Defendant between him and Shri Ramdas Yadav by filing the said standard rent fixation application. Once this clear admission existed on record, it was no longer required for Plaintiffs to lead any evidence to prove existence of landlord tenant relationship between Defendant and Shri Ramdas Yadav. Faced with this difficulty, Mr. Kurup would contend that though the said standard rent fixation application was filed by the Defendant, the moment he realized that Shri Ramdas Yadav is not the real owner of the suit premises, he did not pursue the said application, which came to be dismissed for default. In my view, the outcome of the said standard rent fixation application is immaterial. What is material to note is acceptance of landlord-tenant relationship by Defendant by filing the said Application. Having accepted the said landlord-tenant relationship, Defendant cannot be now permitted to take volte face and submit that some other person viz.

Mr. Jerom Domnic D'Cohna is the real owner or landlord in respect of the suit premises.

8 The alternate defence of Mr. Kurup is that even if Shri Ramdas Yadav is to be treated as Defendant's landlord, there is nothing on record to indicate that the Plaintiffs are grandsons of said Ramdas Yadav. He would submit that Plaintiffs have described the name of their father Shri Brahmadev Yadav. Along with application for additional evidence, copy of ration card of one Shri Shivaprasad Govindram Yadav is produced, in which name of Brahmadev is included as son of 'Shivaprasad Yadav'. Mr. Kurup would therefore contend that Shri Brahmadev is actually son of Shivaprasad Yadav and not of Ramdas Yadav. He would therefore submit that Plaintiffs are actually grandsons of Shiv Shivaprasad Yadav and therefore they have no semblance of relationship with the suit premises. In my view, reliance of the Revision Applicant on ration card issued in the name of Shivaprasad Yadav does not conclusively prove that Plaintiffs are grandsons of said Shivaprasad Yadav. Mere similarity in name of son of Shri Shivaprasad Yadav with that of Plaintiffs father does not *ipso facto* leads to a presumption that Plaintiffs are not grandsons of Shri Ramdas Yadav. Furthermore Shri Brahmadev's age is described as 29 years in ration card issued in the year 1989 whereas age of Plaintiff No.1 at the time of filing of the suit in the year 2008 was 21 years. This difference of age also makes it difficult to believe that Plaintiffs are sons of said Shri Brahmadev Shivaprasad Yadav. The issue with regard to existence of landlord-tenant relationship cannot be decided only on the basis of speculation in absence of any concrete proof. The Trial Court and its Appellant Bench have taken into consideration evidence on record for the purpose of establishing that Plaintiffs are grandsons of Shri Ramdas Yadav. By seeking to produce

additional documents by filing application under Order 41, Rule 27 of the Code Revision Applicant is unable to establish that Plaintiffs are not sons of Ramdas Yadav.

9 Mr. Kurup has also taken me through various other documents sought to be produced alongwith application under Order 41 Rule 27 of the Code. He has relied upon permission for non-agricultural use of the land issued in the name of Thomas Mangai and nine others alongwith the Applicant for the purpose of proving that the family of Thomas Mangai and ultimately Mr. Jerom Domnic D'Cohna is the real owner in respect of the suit premises. He has also taken me through the property card extract to drive home this point that the real owner in respect of the suit premises is Mr. Jerom Domnic D'Cohna. It appears that said Mr. Jerom Domnic D'Cohna has adopted certain legal proceedings with regard to establishing his title in respect of the land in question. In my view, the said dispute with relating to title between the Plaintiffs and Mr. Jerom Domnic D'Cohna is totally irrelevant to the issues involved in the eviction suit filed against the Defendant. As observed above, all that needs to be established in eviction suit is existence landlord-tenant relationship. It is not necessary that the landlord must be a owner of the premises concerned. If tomorrow Mr. D'cohna succeeds in establishing his title in respect of the land in question, he would be in a position to seek recovery of possession thereof from Plaintiffs. However, pendency of that dispute will not have any effect on Plaintiffs' right to seek eviction of the Defendant. In my view, therefore existence of landlord-tenant relationship is conclusively established in the present case on account of Defendant's own conduct in filing standard rent fixation application before the Small Causes Court.

10 Mr. Kurup has relied upon judgment of the Apex Court in *Shri Harju (since deceased) through his proposed legal heirs and others vs. Phulari @ Churmarawati and others*³, in support of his contention it is incumbent for the Appellate Court to decide the application under Order 41, Rule 27 of the Code. I have considered the application filed by the Applicants under Order 41, Rule 27 of the Code and have also glanced through various documents sought to be produced alongwith the same. After consideration of the said documents, I am unable to hold that landlord-tenant relationship does not exist between Plaintiffs and Defendant. In fact, the entire exercise undertaken by the Applicant of seeking to rely upon additional evidence is aimed at proving that Plaintiffs do not have title in respect of the suit premises. As held above, Plaintiffs need not prove the title to the suit premises in the eviction suit. Therefore, none of the documents sought to be produced alongwith Interim Application (Stamp) No.11968 of 2024 are helpful for the purpose of holding that the landlord tenant relationship does not exist between the parties. So far as grounds of eviction are concerned, concurrent findings of fact are recorded by the Small Causes Court and its Appellate bench. No serious attempt is made to point out any glaring error in the said concurrent findings.

11 After considering the overall conspectus of the case, I am of the view that there is no ground to interfere in the concurrent findings recorded by the Small Causes Court and its Appellate Bench in exercise of revisionary jurisdiction under section 115 of the Code. Civil Revision Application is accordingly **rejected**.

3 2005 (10) SCC 191
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12 Since I have already considered the documents sought to be produced alongwith Interim Application (Stamp) No. 11968 of 2024, nothing would survive in the same, and the same is also **disposed of**.

(SANDEEP V. MARNE, J.)

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by SUDARSHAN
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