

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

CIVIL REVISION APPLICATION NO. 648 OF 2024

Vinod Rajkumar Khurana

... Applicant

Versus

Mr.Rashid Suleman Oomer And Ors.

... Respondents

Mr. Bharat Bhatia *a/w Ms. Priyanka P. i/b Ms. Rita Bhatia for the Applicant.*

Ms. Poushali Roychoudhary *a/w Mr. Sandeep Raman for Respondent Nos. 1 to 4.*

CORAM : SANDEEP V. MARNE, J.

DATE : 20 DECEMBER 2024.

P.C. :

1) The Revision Applicant has invoked the revisionary jurisdiction in this Court under provisions of Section 115 of the Code of Civil Procedure for setting up a challenge to the judgment and decree dated 3 December 2024 passed by Appellate Bench of the Small Causes Court dismissing Applicant's Appeal No. 169 of 2018 and confirming the eviction decree dated 2 May 2017 passed by the Small Causes Court in R.A.E Suit No. 450/708 of 2007.

2) I have heard Mr. Bhatia, the learned counsel appearing for Applicant and Ms. Roychoudhary, the learned counsel appearing for Respondents/original Plaintiffs. I have also gone through the

findings recorded by the Trial and Appellate Courts as well as pleadings and evidence placed on record through a compilation.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, there is no dispute to the position that the original tenant in respect of the suit premises was Mrs. Shanta Omkumar Khurana. The original tenant passed away on 23 September 2006. Her husband passed away before her death. The tenant did not have any issue. Defendant Nos. 1 and 2 are real sisters of the deceased tenant. The Revision Applicant/Defendant No.3 claims to be the son of brother of husband of the original tenant. Admittedly, the landlord has not recognized the tenancy the Revision Applicant/Defendant No.3. There is no payment and acceptance of rent in respect of the suit premises between Defendant No. 3 and the landlords. In the light of this position, if Defendant No. 3 wanted to claim transmission of tenancy under provisions of Section 7(15)(d) of the Maharashtra Rent Control Act, 1999, it was incumbent for him to institute a declaratory suit and secure a declaration from the Small Causes Court that the tenancy stood transmitted in his name either by virtue of his presence in the suit premises alongwith the deceased tenant or thorough heirship. Admittedly Defendant No.3 has not filed any declaratory suit seeking declaration of his tenancy rights. In such circumstances, Defendant No.3 cannot be treated as tenant in respect of the suit premises. He therefore does not have any right to remain in occupation of the suit premises.

4) The learned counsel for the Revision Applicant has contended that even while defending an eviction action, it is open for Defendant No. 3 to establish his tenancy rights. Even if this

submission is to be momentarily accepted, there appears to be absolutely nothing on record to indicate that Defendant No.3 participated in the business of the deceased tenant or was using the same alongwith the deceased tenant at any point of time. The current age of the Revision Applicant/Defendant No. 3 as declared in the verification clause of the present Revision Applicant is 79 years. This would mean that he was atleast 63 years old an on the death of the original deceased tenant. If the Revision Applicant was indeed participating in the business activities of the original deceased tenant in any manner, there ought to have been atleast some document of such participation in the business. Alternatively if Defendant No.3 was drawing any remuneration or share in the business, there ought to have been at least one document to show that the original deceased tenant paid to Defendant No.3 any amount towards participation/ assistance in her business activities. However, Defendant No.3 did not produce even single piece of evidence before the Trial Court to prove his participation in the business of the original Defendant-tenant. In my view, therefore, even if the contention of the learned counsel for the Revision Applicant about right of Defendant No.3 to prove his tenancy in an ejectment action is to be accepted, there is absolutely no evidence to infer that Defendant No.3 was using the suit premises together with the deceased tenant at the time of her death.

5) The Trial and the Appellate Courts have appreciated and re-appreciated the evidence on record and have concurrently held that Defendant No.3 is unlawful occupant in respect of the suit premises. In my view, therefore, Defendant No.3 cannot latch on the possession of the suit premises and must vacate the same. In absence of any element of perversity or material irregularity in

exercise of jurisdiction by the Trial and the Appellate Courts, this Court would otherwise not be justified in interfering with the concurrent findings recorded by both the Courts. Civil Revision Application is devoid of merits. It is accordingly dismissed.

6) After the order is pronounced, the learned counsel for the Applicant would pray for time of four weeks for removal articles from the suit premises. The request appears to be reasonable. Accordingly, the Revision Applicant shall have time till 31 January 2025 to remove his articles from the suit premises, and shall forthwith hand over possession thereof to Plaintiffs.

[SANDEEP V. MARNE, J.]