

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

**CIVIL REVISION APPLICATION NO.279 OF 2024
WITH
INTERIM APPLICATION NO.8518 OF 2024
IN
CIVIL REVISION APPLICATION NO.279 OF 2024
WITH
INTERIM APPLICATION NO.1398 OF 2024
IN
CIVIL REVISION APPLICATION NO.279 OF 2024**

Damodar Bhivaji Rane
since deceased through
his legal heirs
Smt. Ratnamala Damodar Rane & Ors.Applicants

V/S

Harisingh Ramshankar Singh
since deceased through his
legal heirs
Anil Singh HarisinghRespondents

Mr. A.A. Siddiquie a/w Mr. Moin Choudhari i/b M/s. A.A. Siddiquie & Associates *for the Applicant.*

Mr. A.R. Singh a/w Ms. Siddhi Vadake and Ms. Dhawni Pandya
for Respondents.

**CORAM: SANDEEP V. MARNE, J.
DATE : 09 DECEMBER 2024.**

P.C.:

1 The revisionary jurisdiction of this Court under provisions of section 115 of the Code of Civil Procedure, 1908 (**the Code**) is

invoked for setting up a challenge to the judgment and decree dated 19 January 2023 passed by the Appellate Bench of Small Causes Court dismissing Appeal No.55 of 2017 and confirming the judgment and order dated 17 December 2016 passed by the Small Causes Court in RAE & R Suit No.77/204 of 2005. Plaintiff's suit has been decreed on the grounds of default of payment of rent and erecting permanent structure without landlord's consent in writing.

2 I have heard Mr. Siddiquie, the learned counsel appearing for Revision Applicants and Mr. Singh, the learned counsel appearing for Respondents/Plaintiffs.

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that both the Courts, after going through the Notification dated 12 January 1984 have concurrently held that the Notification does not cover the land on which the suit premises are situated. Therefore Defendant could not prove before the Trial and the Appellate Courts that the land was declared as a slum as on the date of institution of the suit. Therefore bar under provisions of section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**Slum Act**) is not attracted in the present case.

4 The contention of the learned counsel appearing for the Revision Applicants is that the Plaintiff is not the real owner in

respect of the land in question and that he suppressed the position of filing and pendency of Short Cause Suit No.7924 of 1969 before the City Civil Court questioning his title in respect of the land in question. He would place reliance on the decree passed by the City Civil Court on 7 August 2006 in Short Cause Suit No.7924 of 1969, in which Plaintiff is held to not a owner in respect of the land in question. He would submit that if filing and pendency of the said suit was to be disclosed in the plaint, both the Courts would not have decreed the suit after noticing that the Plaintiff is not the real owner in respect of the suit premises. However perusal of the Written Statement filed by the Defendant would show clear admission on his part about payment of Rs.40/- per month towards rent in respect of the suit premises to the Plaintiff. Defendant thus admitted existence of landlord tenant relationship by paying rent to the Plaintiff in respect of the suit premises. By now it is fairly well settled position of law that a landlord need not be a owner of the tenanted premises. All that is required to be established is existence of landlord tenant relationship for the purpose of attracting jurisdiction of the Rent Court to decide a suit for eviction of the tenant. In the present case since Defendant clearly admitted existence of landlord tenant relationship, he is estopped from challenging the title of the Plaintiff in respect of the tenanted premises. Section 116 of the Indian Evidence Act clearly estop the Defendant tenant from questioning the landlord's title. In my view therefore, pendency or decision of the SC Suit No.7924 of 1969 does not have any bearing on decision of

the eviction suit filed by the Plaintiff against the Defendant. The Defendant, who has secured entry into the suit premises in capacity as tenant by accepting landlord's right to let out the premises, cannot subsequently take a *volte face* and contend that the landlord is not the real owner for the purpose of protecting his possession. In my view therefore, pendency or the decree of S.C. Suit No.7924 of 1969 does not have any bearing on decision of RAE & R Suit No.77/240 of 2005.

5 So far as the ground of default in payment of rent is concerned, it is an admitted position that the Defendant has neither paid arrears of rent after receipt of demand notice nor has deposited the arrears of rent in the Court within a period of 90 days of service of suit summons. The ground of default in payment of rent is thus clearly established.

6 So far as erecting permanent structure without landlord's consent is concerned, there is a direct admission by the Defendant that he did undertake construction of an additional structure but took a false plea that such construction was put up with the consent of the landlord. However written permission of the landlord for such construction could not be produced by the Defendant. Therefore the ground under section 16(1)(b) of the MRC Act is also clearly established in the present case.

7 I am therefore not inclined to interfere in concurrent findings recorded by the Trial and the Appellate Courts in exercise of revisionary jurisdiction. Civil Revision Application is devoid of merits and the same is **rejected**.

8 After the order is pronounced, the learned counsel appearing for the Revision Applicants would pray for continuation of order dated 8 February 2024 by which the Plaintiff was restrained from creating any third party rights in respect of the suit premises after recovery of possession thereof. The request is opposed by the learned counsel appearing for the Respondent/Plaintiff. Considering the reasons recorded for rejecting the Civil Revision Application, I am not inclined to continue the interim order any further. Request for continuation of interim order dated 8 February 2024 is accordingly rejected.

9 In view of the disposal of the Civil Revision Application, nothing would survive in the Interim Applications filed by the Revision Applicants, both the Interim Applications are accordingly **disposed of**.

(SANDEEP V. MARNE, J.)