

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.480 OF 2019

Irani Gustad Khodadad ... Applicant
Vs.
Laxmidas Moraraji (decd) through heirs and others... Respondents

Mr. Agnel Carneiro i/b. M/s. Mulla & Mulla & Craigie Blunt and Caroe for Applicant.

Mr. S. M. Vyas for Respondents No.1b, 1c and 2b.

CORAM : R. G. KETKAR, J.
DATE : JULY 30, 2019

P.C. :

Heard Mr. Carneiro, learned Counsel for the applicant and Mr. Vyas, learned Counsel for the respondents No.1b, 1c and 2b.

2. By this Application under Section 114 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant No.2', has challenged the judgment and decree dated 03.05.2019 passed by the Appellate Bench of the Small Causes Court in Appeal No.461 of 2004. By that order, the Appellate Court allowed the appeal preferred by the respondents No.1a to 1c and respondents No.2a and 2b and set aside the judgment and decree dated 27.09.2002 passed by the learned trial Judge in R.A.E.&R. Suit No.914/6145 of 1970. The Appellate Court decreed the Suit and directed defendants No.1a and defendant No.2 to handover vacant and peaceful possession of block No.D-2 situate on the 4th floor in the building known as Chandra Mahal, Mohamedali Mansion, 241, Princess Street, Bombay 400 002 (for short 'suit premises').

3. In support of this Application, Mr. Carneiro invited my attention

to the findings recorded by the learned trial Judge against additional issue No.11. He submitted that the learned trial Judge has discussed this issue from paragraphs 45 to 57. He submitted that plaintiff No.1 Laxmidas and plaintiff No.2 Tarabai died in the year 1988 and 1983 respectively. The learned trial Judge held that plaintiffs, who were brought on record, were wrongly brought on record after the death of original plaintiffs No.1 and 2, Laxmidas and Tarabai. The plaintiffs have no locus to continue with the Suit as heirs and legal representatives of deceased plaintiff No.1 and deceased plaintiff No.2. Plaintiffs No.2(b), 1(a), 1(b) and 1(c) are not landlords of the suit property as heirs and legal representatives of the deceased plaintiff. The Suit is bad in law for mis-joinder of the party and is not maintainable.

4. He submitted that the Appellate Court did not frame any point as regards maintainability of the Suit or whether the plaintiffs are the heirs and legal representatives of the original plaintiffs - Laxmidas and Tarabai. Without recording any finding as regards maintainability of the Suit, the Appellate Court decreed the Suit. He submitted that Application requires consideration.

5. On the other hand, Mr. Vyas submitted that plaintiffs have attempted to file Marji Application for framing and recording finding in respect of issue of maintainability of the Suit and rights of the plaintiffs to continue the same. The Application was duly affirmed on 20.07.2019 by plaintiff No.1c-Yogesh Mathuradas Kapadia. The Appellate Court however declined to accept filing of this application on the ground that appeal is already disposed of.

6. As the Appellate Court has not discussed and dealt with point of maintainability of the Suit, it is necessary to invoke powers under Order XLI, Rule 25 of C.P.C. The Appellate Court will frame the following

points:

- I. Whether plaintiffs No.1a to 1c are the heirs and legal representatives of original plaintiff No.1?
- II. Whether the Suit instituted by the original plaintiffs can be continued by plaintiffs No.1a to 1c, and consequently, is maintainable or not?

7. The learned Counsel for the parties assure that parties will appear before the Appellate Court on 05.08.2019 and for that purpose, no fresh notice be issued to them. The Appellate Court will accept the Marji Application affirmed by the plaintiff No.1c Yogesh Mathuradas Kapadia on 20.07.2019 and frame the points, referred hereinabove, and transmit the findings on the basis of evidence already on record within 4 weeks from the date of appearance of the parties. Order accordingly.

8. In view thereof, hearing of this Application is deferred till 11.09.2019. In the meantime, ad-interim order granted earlier to continue.

(R. G. KETKAR, J.)

Minal Parab