

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.493 OF 2009

Smt.Kamala Jagannath Koli

..Applicant

V/s

K.Sadanandan (since deceased) Smt.Radha Sadanandan & Ors. ..Respondents

Mr. A.G.Parikh Sr.Counsel with Mr.A.R.Khanna for the applicant.

Mrs. Minakshi Surve i/by V.V.Surve for the respondent no.2.

Coram : R.S.MOHITE,J

Date : 24.9.2009.

PC

1 Heard both sides. This is a revision filed by the original applicant impugning a decree passed by the appellate Court solely on the ground of default. The trial Court had accepted the defence of the defendant that he was in possession and occupation from 1974 under a document dated 6.8.1974. The earlier landlord was one Mr.Dubey and he had assigned the rights to the plaintiff under the document dated 4.5.1981. The defendants have therefore, set up an earlier right in respect of the suit property. This defence was one which went to the root of jurisdiction and dealt with a jurisdictional fact. One Court has accepted the contention of the defendants. It is seen that the appellate Court has held that the document dated 6.8.1974 has been proved but the same does not inspire confidence, without giving proper reasons. In the circumstances, in my view, the application requires to be admitted. Hence, Civil Revision Application is admitted.

2 As regards interim relief pending the disposal of the Civil Revision Application, there will be interim relief in terms of prayer clause-(b).

(R.S.MOHITE,J)