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Presented on : 06.02.2013
Registered on : 18.03.2013
Decided on : 22.01.2019
Period required for disposal
05 Years, 11 Months, 16 Days

CNR NO.MHSCA2-000757-2013

IN THE COURT OF SMALL CAUSES AT BOMBAY

R.A.E. & R. SUIT NO. 551 OF 2013

Shri. BABURAO REVAJI JAGTAP,]
Aged 77 years, Occ.: Landlord,]
Residing at 22, Ekta Co.op. Society,]
Near Kelkar College,]
Mithagar Road, Mulund (E),]
Mumbai – 400 081]Plaintiff

VERSUS

1. Smt. LATA RAMESH JAIN,]
Aged 55 years, Occ: Housewife,]
Tenant of Land beneath R.No. 9,]

'B' Jagtap Cottage,]
 Maharashtra Nagar, Bhandup (W)]
 Mumbai – 400 078]

2.Shri. RAJKUMAR HARIBHAU SHELAR]

Adult age not known,]
 Occupation : Service,]
 residing at Room No.9,]
 B. Jagtap Cottage, Maharashtra Nagar,]
 Bhandup (West), Mumbai – 400 070]Defendants

Mr. D. D. Ahire : Advocate for the plaintiff

Ex-parte against defendant No. 1

Mr. S. C. Gadekar : Advocate for defendant No. 2

Coram : P. G. Deshmukh

Judge, C.R. No.26

Date : 22nd January, 2019

ORAL JUDGMENT :

Suit is filed for granting an eviction decree of the premises i.e. Room No.9 in the property known as “B. Jagtap Cottage” situated at Maharashtra Nagar, Bhandup (W), Mumbai – 400 078.

2. The facts of the suit arising for my consideration are as under :-

The plaintiff is contending as landlord and owner of the property known as “B. Jagtap Cottage”, situated at Maharashtra Nagar, Bhandup (W), Mumbai – 400 078. It is contention of the plaintiff that, prior to the termination of his tenancy, the defendant was the monthly tenant of Room No.9 of the suit property (Here-in-after referred as “the

suit premises” for sake of brevity) @ Rs.20/- per month. He has been paying revenue tax and assessment bearing receipts Nos. 6607814, 0093631 dated 12.06.2012. The suit premises is bounded by towards right side: room of Mr. Chavan, toward the left side : room of Mr. Segnera, towards front side : Mhatre Chawl, having C.T.S. No. 348 (Part) Village : Kanjur. As per the request made by the defendant, Room No.9 ad-measuring about 10' X 10' feet was allotted to her as a tenant. There was open space ad-measuring 50 sq.ft. in front of the suit premises and defendant has encroached the said open land. The defendant has carried out illegal additions and alterations. By carrying illegal additions and alterations, the defendant has extended the area of the suit premises. Despite of complaints made to B.M.C. and Police, no action was taken. It is further stated that, the defendant had agreed to return the room to the plaintiff. After understanding in between parties, the plaintiff had received cost of Rs. 25,000/- as a material cost of the structure and land in question was given on rent basis of Rs.30/- per month. However, the defendant has started illegal business and allotted room to third party on rent basis. Plaintiff is paying taxes of the suit premises to the authorities. Defendant is required to pay rent of Rs. 30/- per month as agreed by her for the land over which the said Room No.9 is situated. It is further contended that, by notice dated 10.05.2011 the tenancy of the defendant was terminated. The defendant was also liable to pay arrears of rent Rs. 3,570/- from December, 2002 till November, 2012. The plaintiff is having apprehension of creating third party interest by the defendant. The suit property is within the territorial jurisdiction of this Court, this Court is having jurisdiction to try and decide the suit, suit is in between landlord and tenant. Suit premises is not covered under the provisions of Slum Act, the defendant

has acquired suitable accommodation at Bhandup. Hence, no harm and prejudice will be caused to defendant, if decree of eviction is passed. Considering all these facts, the plaintiff has prayed for granting an eviction decree.

3. Suit is proceeded ex-parte by an Order dated 12.12.2013 against defendant No. 1. During the pendency of the suit, defendant No. 2 suo-moto appeared and prayed for joining him as necessary party. The application filed by the defendant No.2 is allowed and defendant No.2 is added as necessary party. Suit is resisted by defendant No. 2 by filing the Written Statement at Exhibit- 27. Defendant No.2 states that, misconceived, false, frivolous and illegal suit is filed by the plaintiff. Plaintiff has failed to prove the prima-facie case. Being Advocate by profession with malafide intention and ulterior motive to harass him, the suit is filed by the plaintiff. It is stated that, the plaintiff has already sold out the suit property to the defendant No.1 Lata Jain for total consideration of Rs.25,000/- on ownership basis. Accordingly, all the documents were executed in favour of the defendant No.1 on 11.11.2002. The documents were executed and affirmed before the Special Metropolitan Magistrate, Mumbai in presence of Advocate Dilip Wagh. It is further stated that, suit property was further sold out by defendant No.1 to himself on 28.06.2004. He is in exclusive possession of the suit premises. Since the date of purchase, he is having electricity bill. He is also paying municipal taxes. He is in exclusive possession of the suit premises from 28.06.2004. He has denied other contents of the Plaint. He has also denied relationship in between the plaintiff and himself. Considering all above, he has prayed for dismissal of suit.

4. Considering rival pleadings of parties, my Ld. Predecessor Shri. G. L. Masand has framed issues at Exhibit- 27. All the issues alongwith the findings are as under :-

| SR NOS. | ISSUES | FINDINGS |
|---------|--|----------------------|
| 1 | Does plaintiff prove that defendant No. 1 has made permanent additions and alterations in the suit premises ? | - In the negative |
| 2 | Does plaintiff prove that defendant No. 1 has sub-let the suit premises to defendant No. 2 ? | - In the affirmative |
| 3 | Does plaintiff prove that defendant No. 1 is in arrears of rent and despite service of notice he did not pay rent amount ? | - In the affirmative |
| 4 | Does plaintiff prove that he is entitled to quiet, vacant and peaceful possession of the suit premises and arrears of rent ? | -In the affirmative |
| 5 | What Order and Decree ? | -As per final order. |

:: R E A S O N S ::

5. To prove the contentions of Plaint, on behalf of plaintiff,

P.W.No.1 Shri. Baburao Revji Jagtap is examined at Exhibit-11 and Exhibit- 29. By his testimony, tax receipt Exhibit-15, counter foil of rent receipt Exhibit-16 and office copy of notice Exhibit-17 (colly.) are proved. Plaintiff has closed his evidence by filing pursis at Exhibit- 42. To disprove an allegations, defendant No. 2 Rajkumar Haribhau Shelar is examined as D.W.No.1 at Exhibit-44. By his testimony, he has proved the Agreement for Sale dated 28.6.2004 Exhibit-55, Power of Attorney Exhibit-56 and receipt issued by Additional Tahsildar Exhibit-57. D.W.No.1 has further proved ration card Exhibit-49, Aadhar Cards Exhibit-50 (colly.), election cards Exhibit-51 (colly.), electricity bills Exhibit-52 (colly.), notice dated 16.05.2013 issued by Additional Tahsildar, Kurla Exhibit-53 and original revenue receipt dated 09.12.2014 Exhibit-54. D.W.No. 2 Shashikant Gurav is examined at Exhibit-60. By his testimony, computer generated gas bills Exhibit-65 (colly) are proved. Thereafter, D.W.No.3 Mr. Dilip Wagh examined at Exhibit- 67. By his testimony, documents affidavit, Agreement to Sale and Power of Attorney Exhibit- 73 to 75 are proved. D.W.No.4 Lata Ramesh Jain examined at Exhibit-70. By her testimony documents Exhibit-74 and 76 are proved.. D.W.No. 5 Tukaram Datoba Patil examined at Exhibit-78. Thereafter, defendant No.2 has closed evidence by filing pursis at Exhibit- 80.

AS TO ISSUE NO. 1 :

6. P.W.No.1 Baburao Jagtap states that, prior to the termination of tenancy, defendant was the monthly tenant of Room No.9. He had been paying revenue tax and assessment tax of Room No.9 i.e. suit premises. He has filed copies of revenue tax and assessment receipts

issued for the year 2012. It is further stated that, Room No.9 ad-measuring 10 ft. X 10 ft. was allotted to the defendant, but defendant No. 1 has encroached upon an open land and by carrying out additions and alterations, defendant No.1 has illegally extended an area of the suit room upto 10 X 5 sq.ft. It is also stated that, to follow the rules and regulations of B.M.C. and with an understanding he has received the nominal cost of Rs. 25,000/- as a material cost of the structure and land in question is on rental basis of Rs. 30/- per month. It is also stated that, the defendant was required to pay Rs. 30/- per month as agreed by her for the land over which Room No.9 stands. For land where Room No. 9 is situated he has filed counter foil of rent receipt. In his cross-examination, he has stated that, in the year 1962, he has constructed 'Jagtap Chawl'. There were 10 rooms in the chawl and all the rooms were given on rent basis. He admits residence of defendant Lata Jain till year 2015 in the suit premises. He could not produce an Agreement executed between himself and Lata Jain. He has further admitted that, in Para No.9 of affidavit there is whisper about receipt of Rs.25,000/- and after receipt of notice defendant No.1 has left the suit premises alongwith her belongings. He admits issuance of electricity bills in the name of occupant and even payment of water charges by occupants of the suit premises.

7. D.W.No.1 Rajkumar Shelar states that, he has purchased the suit premises from the defendant No.1 Lata Jain for total consideration of Rs.1,40,000/- as per Agreement and other documents dated 28.06.2004. It is also stated that, with malafide intention the suit is filed by the plaintiff. He has further stated that, the plaintiff has sold

out the property i.e. Room No.9 ad-measuring 10 X 15 sq.ft. to defendant No.1 for consideration of Rs.25,000/- by executing Agreement and other documents. He has denied other contentions of the Plaintiff. In his cross-examination, he states that, he came to the suit premises on 28.06.2004. He was knowing defendant No.1 Lata Jain was the owner of the suit premises in the year 2004. Unregistered agreement was executed by defendant No. 1 Lata Jain in his favour.

8. Even though, the suit is proceeded ex-parte against the defendant No. 1, but D.W.No. 4 Lata Jain has given evidence on behalf of defendant No. 2 by filing affidavit at Exhibit-70. She has stated that, she had purchased Room No.9, 'B. Jagtap Cottage', Maharashtra Nagar, Bhandup (W) for consideration of Rs.25,000/- and the said premises was further sold out to defendant No.2 Rajkumar Shelar on 28.06.2004. In her cross-examination, she could not tell about counter-foils. She admits that documents Exhibit-74 to 76 are not registered documents. She admits that, Room No.9 the suit premises was having roof of mangalore tiles and walls were made up of bricks.

9. Heard, both the Ld. Advocates. Perused the record.

10. There is no specification given by the plaintiff on which date illegal additions and alterations were carried out by the defendant. The original Plan of the suit premises is not filed by the plaintiff. At the same time, there is no record placed on record which could indicate that, initially, the suit premises was of area 10 sq.ft. X 10 sq.ft. and the defendant has extended the area of the suit premises. It is settled law

that, minor repairs in the suit premises are permissible under the provisions of the Maharashtra Rent Control Act, 1999. In the cross-examination of D.W.No.4 Lata Jain, nothing has been brought on record which could indicate carrying out alleged additions and alterations by her. Considering all the above facts, illegal additions and alterations in the suit premises are not proved by the plaintiff. Hence, I answer **Issue No. 1 in the negative.**

AS TO ISSUE NOS. 2 AND 3 :

11. P.W.No.1 Baburao Jagtap states that, the defendant has started illegal business in the suit premises and allotted the same to third party on rental basis of Rs. 4,000/- per month. The defendant has also made her own accommodation. Defendant has shifted to other place alongwith family and materials. He is paying the taxes and duties in respect of the suit premises. He has terminated the tenancy of the defendant by issuing notice dated 10.05.2011. Notice was given by Registered Post. The said notice was not claimed by the defendant. It is further stated that, the defendant was liable to pay the arrears of rent amount Rs.3,570/- since December, 2002 to November, 2012. The defendant has further committed various breaches of terms of tenancy and violated the provisions of the Maharashtra Rent Control Act. In his cross-examination, he states that, Lata Jain was residing in the suit Room No. 9 till the year 2015. He could not produce tenancy agreement executed between himself and defendant No.1 Lata Jain. He has further stated that, he can produce the counter-foils of rent receipts issued in favour of the defendant No.1 after October, 2002. He admits that, in Para No.9 of affidavit, there is whisper about receipt of amount of Rs.

25,000/-. It is also admitted that, after receiving the notice defendant No. 1 has left the suit premises alongwith her belongings.

12. D.W.No.1 Rajkumar Shelar states that, he has acquired the suit premises by executing Agreement for Sale, Affidavit and Power of Attorney dated 28.06.2004. All documents were executed in his favour by defendant No.1 Lata Jain. It is further stated that, he is residing in the suit premises alongwith his family since 15 years. He is paying electricity bills as per Consumer No.000053144276 issued by M.S.E.B.. The plaintiff has filed the suit with malafide intention. It is also stated that, he has filed the Written Statement and denied allegations of the Plaintiff. In his cross-examination, he states that, during course of enquiry, he came to know about the ownership of the defendant No. 1 over the suit premises in the year 2004. He admits that, no transaction was taken place in between himself and Baburao Jagtap. Till date, he has not given any rent to Baburao Jagtap. He has purchased the land out of Survey No. 438.

13. D.W.No.2 Shashikant Gurav states that, he was delivering the gas cylinder at the address of the suit premises. In his cross-examination, he admits that, only after verifying the documents, gas connection is generally issued. He has further stated that, gas connection was firstly issued by the Gas Services at Ghatkopar. But later on gas connection was transferred at Kanjur Gas Services.

14. D.W.No.3 Dilip Wagh states that, he has prepared three documents on 11.11.2002 for the sale of Room No. 9 situated at B

Jagtap Cottage, Maharashtra Nagar, Bhandup (W), Mumbai-00 078. He knows the signature of vendor and purchaser. In his cross-examination, he admits the necessity of registration of documents at the office of Sub-Registrar, Mumbai. He further admits that, Sub-Registrar office of Mulund area is at Bhandup. There is necessity to pay stamp duty and at the time of preparation of documents Exhibit- 73 to 75 required stamp duty was not paid. He admits that, Advocate T. T. Patil working as Special Metropolitan Magistrate was not authorized to execute the documents Exhibit- 73 to 75. He has stated that, when false survey number is disclosed the description of the property will be changed. He has seen the title of vendor while preparing the documents, but he did not know defendant Lata was the tenant of Baburao Jagtap. No tenant can sell the property..

15. D.W.No. 4 Lata Jain states that, she has purchased the suit premises on consideration of Rs.25,000/-. Accordingly, documents Agreement to Sale, Affidavit and Power of attorney were executed on 11.11.2002 in presence of Advocate Dilip Wagh and before Special Metropolitan Magistrate. She has further sold out the same property to defendant No. 2 Rajkumar Shelar on 28.06.2004. It is stated that, she has vacated the suit premises and possession was given to Rajkumar Shelar on 28.06.2004. In her cross-examination, she has denied the contention of the plaintiff as landlord and tenant. She further states that, she did not know about suit in which her name is disclosed as defendant No.1. She further admits the documents Exhibit-74 to 76 are not registered documents. Room No. 9 was having roof of Mangalore tiles and walls were made up of bricks.

16. D.W.No. 5 Tukaram Patil states that, document Exhibit- 55 was prepared by him as per instructions given by Lata Jain. He has further stated that, document Exhibit- 76 was also prepared by him. In his cross-examination, he states that, he did not have proof which could indicate that, 'Maharashtra Nagar' was declared as 'slum area'. He had prepared documents of area which included in Survey No. 338 as per say of Lata Jain. He admits that, documents were not registered and entries of documents were not taken in any register by Special Metropolitan Magistrate.

17. Considering all above facts, it is crystal clear that, on the basis of non-registered document, defendant No.2 is claiming the right in the suit premises. It is also the case of the defendant No.2 that, on the basis of non-registered document, the suit premises was firstly sold out to defendant No.1 and defendant No.1 has sold out the same to him on 28.06.2004. As per the provisions of Maharashtra Rent Control Act, sub-letting is not permissible. As per Section 26, no person is permissible to transfer the right in favour of any other person. Neither Lata Jain D.W.No.4 nor advocate who has prepared documents has stated that, the suit premises was declared as 'slum'. I have already discussed that, suit was proceeded ex-parte against defendant No.1. In respect of right of plaintiff over the suit premises, assessment receipt Exhibit-15 indicates the name of assessor as Baburao Jagtap. Rent receipt Exhibit-16 clearly indicates payment of rent upto October, 2002 by defendant Lata Jain. The suit is already proceeded ex-parte against the defendant No.1 therefore, the contention of the Plaintiff are remained

unchallenged. No particulars are given by the defendant which could indicate that, suit property or suit premises was declared as 'slum' at the time of filing of the suit. It is settled law that, tenancy right can not be transferred without consent of landlord.

18. Section 26 of the Maharashtra Rent Control Act reads as under :-

26. In absence of contract tenant not to sub-let or transfer or to give on licence-

Notwithstanding anything contained in any law for the time being in force, but subject to any contract to the contrary, it shall not be lawful for any tenant to sub-let or give on licence the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

Provided that, the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases any premises or class of premises other than those let for business, trade or storage to such extent as may be specified in the notification.

19. All documents filed by the defendant No.2 indicate continuous possession of the defendant No.2 Rajkumar Shelar, but only continuous possession over the suit premises is not sufficient. If property is not declared as 'slum' then without registered document executed in favour of either defendant No.1 or defendant No. 2 all the transactions become void. Considering all above facts, even though the defendant No.2 is

claiming his independent right in the suit premises on basis of unregistered document, the plaintiff has proved the sub-tenancy in favour of defendant No.2 by defendant No.1. The demand notice is already proved by the plaintiff by leading the evidence. Despite of ample opportunities, rent is not paid by defendant No.1. Tenancy right can not be transferred by unregistered document. Furthermore, receipt of Rs.25,000/- was contended by the plaintiff by filing of Plaint as material cost. Therefore, considering all the above facts, in my opinion, the plaintiff has proved sub-letting and arrears of rent. Hence, I answer **Issue Nos. 2 and 3 in affirmative.**

AS TO ISSUE NOS. 4 AND 5 :

20. In view of Supreme Court Judgment, it is well settled law that, even unregistered document can not use for collateral purposes. In case of **Shanti Bai & Others vs. Ratna Bai & Others Indore, dated 06.7.2018 M.P. No.54/2017, Madhya Pradesh High Court** it is discussed that, Section 49 of the Registration Act provides that, a document purporting to be a lease and required to be registered under Section 107 of the Transfer of Property Act will not be admissible in evidence if the same is not registered, but unregistered lease deed may be looked into as evidence of collateral facts, but in the present case, the defendant is not seeking any relief by way of tenancy right, but defendant No. 2 is claiming his independent right in the suit premises by way of transfer of property. Such transfer without registration is not permissible under the provisions of Transfer of Property Act. Even in the Written Statement filed by the defendant No.2 does not indicate that, at the time of filing of suit, suit premises was declared as 'slum'

and even evidence given on behalf of the defendant does not indicate declaration of 'slum'. Considering all the above facts, unregistered document can not be used for collateral purpose. If a document is inadmissible for want of registration, none of its terms can be admitted in evidence.

21. As per the provisions of Transfer of Property Act, if any property is declared as 'slum' and if any transaction is there, then in such circumstances, provisions of Transfer of Property Act are applicable. In the present case, there is no documentary proof placed on record which could indicate that, in the year 2013, at the time of filing of suit the suit property was declared as 'slum'. Defendant No. 2 is suo-moto appeared before the Court and claiming his independent right in the suit premises. Several documents placed on record only indicates the possession of defendant No. 2 over the suit premises, but documents does not create valid title in favour of defendant No.2. Considering all these facts, the plaintiff is entitled for decree of eviction as prayed for. Hence, I answer **Issue No. 4 in the affirmative** and in answer to Issue No. 5, I pass the following order :-

:: O R D E R ::

1. Suit is decreed with costs.
2. Defendants are hereby directed to vacate and handover the peaceful possession of suit premises viz. **Room No. 9, B Jagtap Cottage, Maharashtra Nagar, Bhandup (West), Mumbai – 400 078** to the plaintiff within period of two months from the date of this order.
3. Plaintiff is directed to file separate application for mesne

profits.

4. Decree be drawn up accordingly.

(Dictated and pronounced in open Court)

Mumbai.

Dt. 22.01.2019.

Dictated On : 22.01.2019.
Transcribed on : 24.01.2019.
Checked on : 28.01.2019.
Signed on : 28.01.2019

(P. G. Deshmukh)

Judge, C. R. No.26

(P. G. Deshmukh)

Judge, C. R. No.26