

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.166 OF 2018

Bhagabai Ganpati Shinde
(since deceased through legal heir)
Yashoda Prakash Budhgaonkar
Age: 51 years, Occ: Household
R/o Khanbhag, Shevale Galli,
Dist. Sangli ... Applicant

Versus

1. Rangrao Ramchandra Jagtap
(since deceased through legal heir)
- 1.A. Shanta Rangao Jagtap
Age: 50, Occ: Household,
R/o Khanbhag, Shevale Galli,
Dist. Sangli.
- 1B. Vinayak Rangrao Jagtap
Age: 30 years, Occ: Business
R/o Khanbhag, Shevale Galli,
Dist. Sangli
- 1C. Gouri Prashant Shinde
Age:--- Occ:--
R/o Chitre Galli Khanbhag, Dist. Sangli
- 1D. Ujawala Rangrao Jagtap
Age:32, Occ: Housewife
R/o Khanbhag, Shevale Galli, Dist. Sangli
2. Vishwas Ramchandra Jagtap
(since deceased through legal heir)
- 2.A. Sharda Vishwas Jagtap
Age: 50, Occ: Agriculture

2B. Dayanand Vishwas Jagtap
Age: 25, Occ: Agriculture

2C. Devki Vishwas Jagtap
Age: 28, Occ: Household

2D. Durga Vishwas Jagtap
Age: 23, Occ: Household
Respondents 2A-2D R/o
Jakhapur, Near Grampanchayat,
Tal. Kavathe Mahankal, Dist. Sangli

3. Prasad Anandrao Jagtap
Age: 30 Occ: Service

4. Smt. Kamal Anandrao Jagtap
Age: 50 Occ: Household

5. Chandrakant Anandrao Jagtap
Age:30, Occ: Education

6. Archana Anandrao Jagtap
Age: 30 Occ: Household
Respondents 3-6 R/o Khabhag,
Shevale Galli, Dist. Sangli

...Respondents

Mr. Umesh R. Mankapure a/w Ms. Rati S. Sinhasane, for Applicant.

Mr. Akshay A. Kulkarni, for Respondents.

CORAM : M. M. SATHAYE, J.

DATE : 6th February 2026.

ORAL JUDGMENT :

1. This Civil Revision Application, filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') challenges the Judgment and decree dated 14.06.2017 passed by the learned Ad-hoc District Judge-2, Sangli in

Regular Civil Appeal No. 274 of 2010, whereby the appeal preferred by the Revision Applicant – Bhagabai Ganpati Shinde is dismissed, thereby confirming the Judgment and Decree dated 31.08.2010 passed by the learned 2nd Joint Civil Judge, Senior Division, Sangli in Regular Civil Suit No. 333 of 2000, by which the suit filed by the Respondents-Landlords for eviction of the Revision Applicant-Tenant was decreed.

2. The dispute is arising out of a landlord-tenant dispute under provisions of Maharashtra Rent Control Act, 1999 ('MRC' Act for short). One room admeasuring 10 ft x 10 ft with vacant area around it out of C.S. No. 246A/2 at Uttar-khan of Sangli city is the suit premises.

3. The Respondents/Landlords instituted the said suit for recovery of possession of the suit premises against the Revision Applicant/Tenant contending *inter alia* that after the conclusion of earlier litigation between the parties, there was a change in circumstances and that the suit premises were required bona fide by the Plaintiffs. In the original plaint, the requirement of Plaintiff No. 2 – Vishwanath Ramchandra Jagtap was pleaded on the ground that he is doing business of milk collection and was residing with his family and three children at Village Jakhapur. It was pleaded that Vishwanath and his children frequently visited Sangli, but due to lack of space, they were unable to stay there, and the suit premises are bona-fide required. The requirement of other the Plaintiffs was also pleaded.

4. In the year 2008, the Respondents amended the plaint by adding paragraph 5-A contending that the subject matter property (in which suit-premises are situated) has been partitioned amongst the Plaintiffs and suit premises has fallen to the share of Plaintiff No. 2 Vishwanath (a.k.a.

Vishwas). It is contended that Plaintiff-Vishwanath has three children and that his son Dayanand aged 19 years, was pursuing education and also assisting his uncle (Plaintiff No. 1) in carpentry work and he is of marriageable age. It was contended that Vishwanath had closed his business and intended to shift to Sangli with his family, but was unable to do so for want of accommodation. It was further pleaded that Vishwanath's financial condition is dire as he has no land or source of income and that his land at Jakhapur was acquired for a wind-mill project by Suzlon Company.

5. The Revision Applicant/Original Defendant filed her written statement denying the *inter alia bona-fide* requirement. She resisted the suit on the ground of *res-judicata* contending that an earlier suit (R.C.S. No. 132 of 1990) between the same parties for the same suit-premises was decreed only on the ground of default, which was set aside in appeal. She contended that the accommodation available with the three brothers are sufficient and that Plaintiff No. 1 has sold a property at Vijaynagar, Sangli, indicating absence of *bona-fide* requirement. She further contended that her financial condition is weak and that she was dependent on her daughter's income and would suffer greater hardship if evicted. An additional written statement was filed opposing the amended plaint, denying the theory of oral partition, asserting that Vishwanath permanently resides at Jakhapur and owned residential properties bearing Gram Panchayat number, denying closure of business and acquisition of land.

6. Issues were framed. Parties led evidence and learned Trial Judge decreed the said suit granting eviction. The Trial Court held that the requirement and greater hardship are proved in favour of the landlord. The Trial Court also held that the suit is not hit by principles of *res judicata*. The Trial Court also directed inquiry into mesne profits.

7. The Revision Applicant/Tenant filed the said appeal challenging the decree of eviction. During pendency of the appeal, both Original Defendant-Bhagabai Ganpati Shinde and Plaintiff No. 1- Rangrao and Plaintiff No. 2- Vishwanath (a.k.a. Vishwas) expired and their legal heirs are brought on record.

8. The Appellate Court dismissed the said appeal under the impugned Judgment and Decree concurring with the findings of the Trial Court that *bona-fide* requirement and hardship is proved in favour of landlords and suit is not hit by *res-judicata*.

SUBMISSIONS

9. Learned Counsel Mr. Mankapure, appearing for the Revision-Applicant / Tenant submitted as under.

9.1. That pleadings in the earlier suit as well as in the present suit and the case made out by the landlords in both the suits are same and therefore the suit is clearly hit by principles of *res judicata*.

9.2. That when the earlier suit was decreed only on the ground of default, it is only the tenant who pressed the appeal and the landlord did not press the appeal on the ground of requirement. That the earlier appeal was dismissed in February-2000 and immediately within a span of four months, the present suit is filed claiming same requirement in June-2000 and therefore, there is no change in requirement and case is not *bona fide*.

9.3. That case of oral partition between the three brothers pleaded by way of amendment is nothing but an attempt to create an artificial requirement and is a ruse to pretend *bona-fide* requirement.

9.4. That in the given set of facts, when three brothers are having the property and two brothers take individual shares having usable rooms or buildable area, no prudent man would accept the portion in possession of the tenant in an equitable partition, especially when Plaintiff No.2 has a land and house at Village Jakhapur. That therefore the case of partition could not be believed for *bona-fide* requirement. That one of the plaintiffs has sold a property at Sangli and therefore need is not *bona-fide*.

9.5. Mr. Mankapure has taken the Court through various statements made in the oral evidence and cross-examination in support of his contention. He submitted that the landlord's witness has admitted that details of alleged partition such as date etc. is not known, clearly indicating that partition is not genuine.

9.6. He relied upon the judgment of **Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta**, [(1999) 6 SCC 222] in support of his submission that requirement cannot be a mere desire and there has to be something more than that.

10. On the other hand, learned Counsel for the Respondent Mr. Kulkarni supported the impugned judgment and decree and submitted as under.

10.1. That if the pleadings in the plaint of the earlier suit and the present suit are carefully seen then it is clear that in the earlier suit, requirement was pleaded for brothers Rangrao and Anandrao alongwith the Vishwanath and in the present suit, the requirement is specifically pleaded for brother ishwanath (Plaintiff No.2 herein).

10.2. That the requirement is pleaded for children of Vishwanath for the purpose of their education as well as for performing marriage of son.

10.3 That the Defendant/Tenant in the written statement has clearly accepted that the three brothers have divided the property in the municipal record and has also admitted that landlord of the suit premises in her possession is Plaintiff No.2-Vishwanath and other Plaintiffs (Rangrao and Anandrao) have no concern with the same.

10.4. That it has come on record in the earlier suit that certain amount was lent as loan by the tenant on the basis of which the ground of default was held as 'not proved' by the Appellate Court and even in the present suit, the witness for the tenant has expressed wish to purchase the suit premises herself. This indicates that financial position of the tenant is sound.

10.5. That both the son and daughter of the Plaintiff-Vishwanath have been examined who have asserted their requirement and there is no reason to disbelieve them.

10.6. That the landed property at Jakhapur is admittedly acquired and the sale of property at Vijaynagar, Sangli by other brother is not relevant for the purpose of considering requirement of Vishwanath. He relied upon the judgment **Shridhar Dattatraya Karadkar vs. Narayan Laxman Soparkar, [2017 (4) Mh. L. J. 712]** in support of his case.

REASONS AND CONCLUSION

11. I have considered the rival submissions carefully and perused the record. I have also gone through the judgments of Trial Court and Appellate Court, both in the earlier round of litigation and present one.

12. At the outset, it is necessary to note that revisional jurisdiction of this Court under section 115 of the CPC is limited to considering whether there is any jurisdictional error or perversity or whether the impugned order is based

on appreciation and misreading of pleadings/ evidence, so much so that if allowed to stand, would amount to miscarriage of justice, as laid down by the Hon'ble Supreme Court in paragraph 10 of **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav** [1965 SCC OnLine SC 83] and paragraph 43 of **HPCL Vs. Dilbahar Singh** [(2014) 9 SCC 78]. Unless such situation exists, re-appreciation of evidence is not permitted under Section 115 of CPC.

13. So far as the aspect of *res judicata* is concerned, the Appellate Court has considered the pleadings of the earlier suit as well as present suit and has concluded that the cause for which earlier suit was instituted ceases to exist and the cause for the new suit is that Plaintiff-Vishwanth has closed his business and wants to settle at Sangli and bonafide requirement is claimed.

14. In this respect, for the objective satisfaction of the Court, I have gone through the pleadings of the earlier plaint and present plaint. In the earlier plaint in paragraph No. 4, the requirement of other brothers i.e. Anandrao and Rangrao is specifically pleaded as stating that they are occupying only one room each staying with their families with school going children. The only statement about Plaintiff-Vishwanath is that he stays at Village Jakhapur and he does not have premises to stay. The requirement about the children and their education and marriage was not specific about the Plaintiff-Vishwanath. However, in the present suit in the original plaint, the requirement of Plaintiff-Vishwanath is pleaded specifically and the plaint is amended in 2008, i.e. after a span of about eight years from decision in the earlier litigation. By amendment, it is specifically pleaded that Plaintiffs have orally partitioned the property among themselves and in the partition, the suit premises (tenanted property) has fallen to the share of the Plaintiff-Vishwanath. That he has closed his business. That he has three children.

That his son Dayanand is 19 years of age who is taking education as well as working with his uncle that he is of marriageable age. That for want of space Plaintiff-Vishwanath and his family members cannot start residing at Sangli. That financial condition of Plaintiff Vishwanth is dire since he has no land because the same acquired by Suzlon Company.

15. With such specific pleadings in the present suit for requirement of Plaintiff-Vishwanath and with the case of partition eight years after the decision in earlier litigation, in my view, the conclusion of Courts below that present suit is not hit by *res-judicata*, is legal and proper. It cannot be said that the issues directly and substantially involved in the earlier suit is involved in the present suit.

16. So far as the argument about the case of partition being an attempt to create artificial requirement is concerned, it is material to note that the Revision-Applicant / Tenant, in amended written statement paragraph No. 5A, has admitted that the Plaintiff - Rangrao has applied to the local authority and has got divided the suit property into three parts. She has also admitted in the written statement that a new property card is opened and amendment is carried out in the map and area. The tenant has not examined herself by entering witness box she however has examined her daughter (Sau. Yashoda Prakash Budhgaonkar). This witness has admitted in cross examination that other plaintiffs (brother Rangrao and heirs of Anandrao) have no concern with the suit premises, and as per record the landlord of the suit premises is Plaintiff No. 2 Vishwanath.

17. The argument is that the landlord's witness could not answer the question about the partition such as date etc. and therefore it must be held

that there is no real partition. However, in the teeth of stand taken by the Tenant herself in the written statement, as well as admission given by her witness, the theory of partition is apparently accepted by the Tenant herself and therefore the said argument has no merit.

18. Landlord is the best judge of his requirement and it is not for the tenant or Court to dictate terms to the Landlord as to how he should use his own premises, as held in **S. R. Babu vs. T. K. Vasudevan & Ors.** [2001 (4) ALL. MR. 536], **Prativa Devi (Smt) vs. T. V. Krishnan** [(1996) 5 SCC 353] and **Meenal Eknath Kshirsagar (Mrs.) vs. Traders & Agencies & Another** [(1996) 5 SCC 344]. Requirement is something more than mere desire/wish but less than compelling and dire necessity, as held in **Raghunath G. Panhale (Dead) By Lrs. vs. Chaganlal Sundarji & Co.** [2000 Bom. R.C. 143]. This is settled position of law.

19. Landlord Plaintiff Vishwanath himself and his son (Dayanand) as well as daughter (Durgamata), all have entered witness box and have supported the case of requirement for stay at Sangli for residence. They have asserted that they wish to shift to Sangli but has no residence of their own. Landlord's daughter has led evidence to the effect that she requires the suit premises because she is required to stay elsewhere for taking her education. Considering the requirement to shift to Sangli with family and for the purpose of residence to support education of children and son being of marriageable age, availability of house at Village Jakhapur is of no consequence. Also if any property is sold by brother of Vishwanath, considering that they have partitioned amongst themselves, such sale will not affect Vishwanath's requirement. Nothing is brought to the notice of the Court to show that Vishwanath had other property at Sangli which he sold.

20. Considering the evidence, as appreciated by the Trial Court and the Appeal Court, the concurrent finding of fact about bonafide requirement, appears most probable and it does not require any interference.

21. So far as the aspect of comparative hardship is concerned, the witness for the tenant has expressed wish to purchase the suit premises herself. This itself is sufficient to show that the financial capacity of the tenant is sound. There is nothing on record to show that the tenant has made any effort and despite due diligence other premises could not be found. In that view of the matter, even the concurrent finding on the ground of comparative hardship appears most probable and does not require any interference.

22. Lastly, so far as the Judgment of **Shiv Sarup Gupta (supra)** relief upon by the Petitioner is concerned, there is no dispute about the proposition of law that the requirement has to be more than mere desire. However, in the facts and circumstances narrated above, when the landlord's children including son of marriageable age as well as education-taking daughter have entered witness box and asserted requirement, it cannot be said that the requirement is mere desire. This is certainly a case which falls just short of dire necessity.

23. In the aforesaid facts and circumstances, there is no jurisdictional error and concurrent findings do not require any interference. The **Civil Revision Application is accordingly dismissed.**

24. At this stage, learned Counsel for the Revision Applicant prays for continuation of stay to the eviction decree. The request is opposed by learned Counsel for the landlord.

25. Considering the facts and circumstances of the case, **subject to the Revision Applicant filing an undertaking-affidavit** in this Court, within a period of three weeks from today, stating that she will not create third party interest and she will not induct third person and that she will vacate the suit premises within eight weeks from today, eight weeks time to vacate is granted.

26. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]

TALLE
SHUBHAM
ASHOKRAO

Digitally signed by
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ASHOKRAO
Date: 2026.02.09
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