

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

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38 CIVIL REVISION APPLICATION NO. 129 OF 2015

MANOHAR RAJARAM BADGUJAR (DIED) THROUGH LRS SMT.
 LILABAI MANOHAR BADGUJAR AND OTH

VERSUS

VITTHAL NIMBAJI BADGUJAR DIED THROUGH LRS JIVANRAO
 VITTHALRAO BADGUJAR AND ANOTHE

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Advocate for Applicants : Mr. Deshmukh Ravindra M.

Advocate for Respondents 1, 2-a to 2-e, 3to7:

Mr. Bhokarikar Madhav M

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CORAM : S. V. GANGAPURWALA, J.

DATE : 14th September, 2015

PER COURT :

1. The present respondents filed suit for eviction against the present applicants on the ground of reasonable and bonafide need. The trial court, decreed the suit. Aggrieved thereby, the tenant filed appeal before the District Court. The District Court dismissed the appeal and confirmed the judgment and decree passed by the trial court. The tenant assailed the said concurrent findings in the present revision.

2. Mr. Deshmukh, the learned counsel for the applicant-tenant strenuously contends that the Court has failed to consider the impact of the earlier suit for eviction filed by the respondent landlord, wherein

eviction was sought on the ground of bonafide requirement and the said plea has been negatived up to this Court. As such, the second suit for eviction on the same ground of bonafide requirement is not tenable. The suit is barred by section 11 of the Code of Civil Procedure.

3. Learned counsel submits that the Court below did not appreciate the evidence in its correct perspective. The Court below failed to consider that the family of the plaintiff is a joint family and they own various plots in the city. This aspect needs to be considered. Though the plaintiff has five sons, he has various properties, wherein the sons can be accommodated. The suit property is reasonably and bonafide required to the respondent's son Balkrishna. There is no evidence to show that Balkrishna carries on any business, much less business of contract. Learned counsel submits that the judgment and findings are perverse.

4. Mr. Bhokariker, learned counsel for the respondents supports the judgment and decree.

5. I have gone through judgment.

6. Jurisdiction of this Court in revision would be in a narrow compass. This Court, would exercise its revisional jurisdiction only if the Courts below have perversely appreciated the evidence or have wrongly applied the provisions of law.

7. The Courts below have observed that the plaintiff has five sons and has a big family. The suit property is insufficient for the residence of the members of the family. One son i.e. Dr. Dilip runs his Hospital in CTS No.323. Bonafide need of his son Balkrishna has been considered by both the Courts below in a plausible manner. The suit premises is required for the residence of son Balkrishna and also for running business.

8. The Court has observed that house of the plaintiff, wherein the plaintiff resides consists of only three rooms and it is impossible for the plaintiff to reside in the said three rooms alongwith five sons. The Courts below have also observed that witnesses are examined by the plaintiff for proving this fact so also it has come in evidence that there are clashes because of insufficient accommodation in

the family of the plaintiff.

9. As far as hardship is concerned, it has been observed that other plots possessed by the plaintiff are open plots. Even defendant has admitted in his cross examination that his father is member of MIDC and open sites for residence and business are available. The defendant has stated in his evidence that he has not searched for places for residence and business in industrial area. Alternate places are available.

10. Whenever the aspect of hardship is similar to the plaintiff and the defendant, the balance would tilt in favour of the plaintiff.

11. Considering the aforesaid aspects of the matter, no error has been committed by the Court below by decreeing the suit. As such, the Civil Revision application is dismissed. However, with no order as to costs.

(S. V. GANGAPURWALA, J.)

JPC