

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

CIVIL REVISION APPLICATION NO. 1043 OF 2014.

Shri Chandrakant R.Patankar

(Deceased) His Legal Heirs -

Mrs.Charulata Anant Patki & ors.

.. Applicants

Vs.

Shri Manohar N.Chodankar.

.. Respondent

Mr.S.S.Kanetkar, for Applicants.

Mr.Shriram Kulkarni i/b Mr.S.C.Wakankar, for the Respondent.

CORAM: N.M.Jamdar, J.

Wednesday 15 April, 2015

Oral Order :

By this Revision application, the Applicants challenge the Judgment and Orders passed by the Small Causes Court, Pune and the District Judge, Pune directing eviction of the Applicants from the suit property which was held by their father as a tenant.

2 The suit property is a ground floor consisting of five rooms admeasuring 1200 sq.ft. in a property admeasuring 2000 sq.ft. The father of the Applicants was tenant of the suit premises and the Respondent is the owner and the landlord. The Respondent became landlord of the premises by virtue of a Will executed by the father. The Respondent-plaintiff filed Suit bearing R.C.S No.265 of 2001 in the Small Causes Court, at Pune for eviction of the father of the Applicants -Original Defendant. According to the Plaintiff the premises were needed for the purpose of business of his son and also because his son after the marriage needed to stay separately. It

was also pleaded that the daughter of the Plaintiff who was residing in United States had no premises whenever she came to India. The ground of default and permanent construction was also pressed in service. The suit was filed on 5 May 2004. The Written statement was filed by the original Defendant. It was contended that Defendant's son visits the premises. Defendant's daughter settled in Kolhapur also comes to Pune. Her son who is studying in Pune resides with them. The need pleaded by the Plaintiff was controverted and the ground of default and permanent additional alterations was challenged. The Small Causes Court by Judgment and Decree dated 6 February 2006 decreed the suit on the ground of bonafide requirement and the other grounds as regards default and permanent alterations, were negatived.

3 Thereafter the Defendant filed Civil Appeal No.377 of 2006 in the District Court, Pune. Pending the Appeal, the original Defendant expired on 2 February 2010. The present Applicants were thereafter brought on record by allowing the application filed by them. Around that time the son of the Plaintiff expired in an accident. The Applicants filed an application for amendment of Written Statement in the appeal. By order dated 22 March 2011, the application for amendment was rejected by the learned District Judge. Thereafter the Applicants filed a Writ Petition bearing No.5518 of 2011. The Writ petition was disposed of on 12 September 2011 by consent of parties wherein the parties were permitted to lead additional evidence and the learned District

Judge was directed to remit the record of Civil Appeal to the learned trial Court for recording of evidence. The application for amendment was also granted.

4 Before the Small Causes Court, the Respondent filed an application for amendment of the plaint. By order dated 21 March 2012, the application for amendment of the plaint was granted by the learned Judge, Small Causes Court. This order was challenged by the Applicants in Writ Petition No.4757 of 2012. The petition was disposed of on 25 February 2013 by learned Single Judge of this Court. The learned Single Judge held that no amendment could have been granted by the learned Judge, Small Causes Court, however there was no need for amendment as what the Respondent was seeking is only elaboration of the need of the landlord in relation to the suit premises and which need subsists despite the unfortunate demise of his son. The learned Judge disposed of the petition by clarifying that the Respondent will not be precluded from pressing the need on the ground that it still subsists.

5 Thereafter the parties led additional evidence before the learned Judge, Small Causes Court. The learned Judge, gave a finding in it's order dated 8 August 2013 and transmitted the same to the learned District Judge. The learned District Judge, heard the appeal and by Judgment and Order dated 25 January 2014, dismissed the appeal. Thereafter present revision is filed.

6 The suit was filed by the Plaintiff for need of his son ,his family and also for the daughter of the Plaintiff. After the suit was decreed unfortunately, the son of the Plaintiff expired in an accident in unfortunate circumstances. Though the revision application has been filed by four Applicants only one i.e. Applicant No.1(d)-Mr.Priyank Phadnis has asserted his need. It has come on record that the two daughters of the original Defendant are settled elsewhere, so also the Applicant No.1-e.

7 The concurrent Judgments and Decrees have been passed by the Courts below directing the eviction of the Applicants. This has been resisted by the Applicant no.1-d Priyank by claiming that he has become tenant. The other Applicants have not asserted this position. Therefore the claim of Priyank needs to be examined.

8 Applicant No.1-d Priyank has claimed that he was residing with the original Defendant who was his maternal grandfather, and he continues to reside in the premises. He has stated that he is also an heir of the original Defendant. The learned Judge Small Causes Court, in the order dated 8 August 2013 and the learned District Judge, Pune in the Judgment dated 29 January 2014 have examined the claim of Priyank in detail.

9 In this context, the statement in the evidence of the Defendant needs to be noticed. The Defendant had stated that he has two daughters and one son. His son permanently stays in Mumbai. His daughters are married. One daughter is permanently

settled in United States and one daughter is settled in Kolhapur. He had admitted that none of the children will come to stay with him in Pune permanently. He had admitted that Priyank is studying in Pune, for Chartered Accountant articles and M.Com and he is only staying with him as a caretaker and help. He also admitted that the entire family of Priyank was settled in Kolhapur. He stated that all the children are educated and have a source of income. They do not help him financially neither he has asked any financial help and that none of them require the premises after his death. This deposition was given in the year 2005.

10 The Defendant passed away on 2 February 2010. Both the Courts found that Priyank was not residing between the year 2008 and February 2010. Priyank produced letters of the institution of Chartered Accountant dated 17 November 2004, 10 December 2004, letter issued by Bank of India and First Information Report dated 29 December 2010 in respect of some criminal proceedings.

11 Mr.Kanetkar ,the learned counsel for the Applicants submitted that both the Courts have not considered these documents in their proper perspective . Firstly, it has to be noted that Priyank has tried to disown the statement of his maternal grandfather that he was residing there just to help him and his family was settled in Kolhapur. Priyank himself in his evidence has given various admissions. He has admitted that his family resides in Kolhapur. He has even renewed the passport for the relevant period showing the address of Kolhapur. He has admitted that after verifying the

address the passport was renewed. He has admitted that his brother, who has done C.A. from Kolhapur, is settled in Kolhapur. He has admitted that he has not taken any entry in respect of the suit premises in the Ration card nor his name appears in voters list. His father-in-law resides at Pune and owns a bungalow. He has admitted that neither during the engagement or his marriage, he has given the address of suit premises on the invitation cards. These are material facts to establish whether Priyank was residing in the suit premises at the relevant period. Both the Courts relief upon this evidence to come to a factual finding that he was not residing. Merely because by assessing evidence another view is possible is not a ground to interfere in revisional jurisdiction. If passport, ration card, voters list, marriage cards showed the address of Priyank from suit premises and had the Courts below rendered findings in his favour then that could not have been set aside on the ground of being perverse. Conversely also, in absence of any of these documents and the fact that passport shows the address of Kolhapur, reliance thereupon to hold against Priyank also cannot be termed as perverse. The other documents such as letters of association do not have such evidentiary value as the above mentioned documents possess. Ultimately, it is a matter of evaluation of evidence. The Plaintiff had also produced on record electricity bills for the relevant period which discloses the meter reading as zero. There is absolutely no explanation on behalf of the Applicants as regards these documents. It is then claimed by Priyank that he has become heir of the original Defendant. The

original Defendant was his maternal grandfather and Priyank is not class I heir. When his mother is alive, he cannot be termed as an heir. The finding of both the Courts below on this ground therefore, cannot be disturbed.

12 It was then contended that after the death of the son of the Plaintiff, the decree of eviction should be set aside. Though it may be a permissible legal argument it is a rather heartless one. The son of the Plaintiff died in an accident at a young age. The Applicants have tried to capitalise of this unfortunate event. It was then contended that the need of the son was the only need and nothing remains in the matter after his death and both the Courts have acceded to the scope of remand. This suit was filed by the Plaintiff also on the ground that his daughter who is in United States requires the premises when she visits India. The learned Single Judge in the order dated 25 February 2013 has kept all issues open including the other need. Therefore, consideration of the need of the daughter could not be treated as irrelevant or outside the scope of remand. The learned District Judge has stated that the desire of plaintiff's daughter to come to India to settle with her aged parents cannot be treated as an empty desire or not a bonafide one. The daughter of the Plaintiff is only a green card holder and has not acquired citizenship of United States. Furthermore, the situation has undergone change after the death of the son of the Plaintiff and that their daughter is now is the only one to look after them in their advanced age. Therefore, the findings based on the need of their daughter also cannot be set aside.

13 It was then contended that the fact that the Plaintiff is unable to climb to the first floor is not pleaded in the plaint. Again this argument cannot be countenanced. Due to passage of time after institution of the suit, the Plaintiff has become 82 years old. His wife is now 77 and the wife of the Plaintiff has deposed as regards their difficulty to climb the first floor. The learned District Judge has taken note of this position and has upheld this need which has arisen due to pendency of the litigation. It will be unfair to set aside this finding only on the ground that it is not pleaded in the plaint when it has naturally arisen due to the pendency of the litigation. Furthermore, most importantly, the only claim on behalf of the Applicants is made by Priyank who both the Courts is found as not residing in the premises at the time of the death of the defendant.

14 Therefore taking overall view of the matter, I am of the opinion that no case is made out for interference. There is no perversity or error of jurisdiction by both the Courts. The Revision application is accordingly dismissed.

15 Considering the facts and circumstances and that time required to obtain copy of this order, the interim order dated 11 December 2014 will continue for a period of eight weeks.

(N.M.Jamdar, J.)