

Sequeira

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

WRIT PETITION NO. 9685 OF 2014.

Yeshodabai Vituappa Gawali

Since deceased through her
legal heirs and legal representatives

1A Devidas Vituappa Gawali & anr.

.. Petitioners

Vs.

Taherbhai Ibrahim Bohari

Since deceased through his
heirs and legal representatives

1A Rubanbai Taher Ali & ors.

.. Respondents

Mr.PN.Joshi a/w Mr.N.M.Pujari, for Petitioners.

None for Respondents.

***CORAM: N.M.Jamdar J.
Wednesday 25 March, 2015***

PC.:

By this petition, the Petitioners challenge the Judgment and Decree dated 10 September 2001 passed by the learned Additional District Judge, Malegaon in Regular Civil Appeal No.493 of 1989 and decree dated 23 October 1989 passed by learned Civil Judge, Junior division Manmad, in the Suit No.276 of 1984, filed by the Respondents seeking eviction of the Petitioners.

2 The Respondents filed a suit seeking eviction of the Petitioners on the ground that the Petitioners had committed default in payment of rent, that the Petitioners had encroached on

the remaining land of the Respondents and the Petitioners were using the premises which was causing nuisance and annoyance to the Respondents. The learned Civil Judge came to the conclusion that the Petitioners were defaulters and were carrying on business in such a manner which was to cause nuisance to the Respondents and accordingly directed that the Petitioners be evicted from the premises. The Petitioners thereafter filed an appeal in the District Court which was dismissed by the learned District Judge.

3 I have heard the learned counsel for the Petitioners. Both the Courts assessed the evidence on record and came to the conclusion that the Petitioners had committed default in payment of rent. The evidence produced on record showed that there were not rent receipt issued for the period from July 1978 onwards. For the earlier period rent receipts were issued. The witness for the Petitioners had also admitted rent demanded by the Respondents was not paid as the Petitioners found it excessive. However, no steps were taken by the Petitioners to fix the standard rent. In view of this position, there is no error in the findings of both the Courts that the Petitioners have committed default in payment of rent.

4 The Petitioners were carrying on business of milk by keeping buffaloes in the suit premises. No evidence was produced by the Petitioners to show that property was initially let out for that purpose. Both Courts accepted the case of the Respondents that converting the property as a dairy and cowshed caused nuisance to the Respondents, who are residing next door. Therefore, there is no

error in the Judgment and Decree passed by both the Courts below.

5 Writ Petition is accordingly rejected.

6 The learned counsel for the Petitioners submitted that some time to vacate may be granted to the Petitioners. It appears that the appeal was dismissed in the year 2001 and the Respondents did not take steps to execute the decree for a long period of time. Even today there is no caveat filed on behalf of the Respondents / landlords. Considering these facts, I am of the opinion that eight months time requires to be granted to the Petitioners to vacate the premises. Accordingly, it is directed that the possession of the Petitioners be protected for the period of eight months from today however, it shall be on the condition that the Petitioners and its all family members residing shall file undertakings in usual format as prescribed in this Court within period of three weeks from today.

Writ petition is accordingly disposed of.

(N.M.Jamdar J.)