

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

**CIVIL REVISION APPLICATION NO. 289 OF 2014**

1. Sou. Sujata Bhimrao Jagtap ..Applicants  
and Ors.

Vs

Shri Shivaji Shahaji Magade .. Respondent

Mr. Balasaheb Deshmukh i/b Ajay A. Joshi, Advocate for Applicants.

Mr. Amarsen B. Babar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.  
DATE : 11/07/2016

**PC:**

1. Heard Mr. Balasaheb Deshmukh, learned counsel for the applicants and Mr. Amarsen Babar, learned counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as 'defendants', have challenged the Judgment and decree dated 28.2.2011 passed by the learned 9<sup>th</sup> Jt. Civil Judge, Jr. Dn., Pandharpur in Regular Civil Suit No.217 of 2009 as also the Judgment and decree dated 20.12.2013 passed by the learned District Judge-1, Pandharpur in Civil Appeal No.64 of 2011. By these orders, the Courts below decreed the suit instituted by the original plaintiff under sections 15 and 16(1)(g)

of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. In support of this Application, Mr. Deshmukh strenuously contended that the suit instituted by the plaintiff itself was not maintainable as in the suit, the plaintiff asserted that defendants no.1 and 2 are unauthorisedly occupying the suit premises. In other words, there is no relationship of landlord and tenant between the plaintiff and defendants no.1 and 2. He submitted that though this point was not agitated in the Courts below, the same can be agitated in this application under section 115 of C.P.C. as it is a pure question of law and goes to root of the matter.

4. On merits, he submitted that the Courts below failed to consider the admissions given by the plaintiff during the course of cross examination. In particular, Mr. Deshmukh submitted that in the cross examination the plaintiff admitted that opposite to the suit premises, there is two storeyed building standing in the name of his mother. There are several premises available in the said building. The Courts below have not considered the availability of these premises while accepting the claim made by the plaintiff that he requires the suit premises reasonably and bona fide. Apart from that, the plaintiff also admitted that he had constructed house at Sangola and presently is residing in Sangola. Thus, the availability of premises at Sangola was also

not considered by the Courts below. Mr. Dehsmukh has taken me through cross examination of the plaintiff as also the findings recorded by the Courts below and submitted that the application requires consideration.

5. On the other hand, Mr. Babar supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under Sections 15 and 16 (1)(g) and also held that greater hardship will be caused to the plaintiff by refusing to pass a decree of eviction. He, therefore, submitted that no case is made for invocation of powers under section 115 of C.P.C.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Mr. Deshmukh submitted that in the plaint the plaintiff asserted that defendants no.1 and 2 are occupying the suit premises unauthorisedly. In other words, they are trespassers and there is no relationship of landlord and tenant between the plaintiff and defendants no.1 and 2. The suit is, therefore, liable to be dismissed. I do not find any merit in this submission. Bear reading of the plaint does not indicate that the plaintiff contended that defendants no.1 and 2 are unauthorised occupants in the suit premises. It is material to note that one Malik Shankar Sakhare, since deceased, was a tenant in

the suit premises. Defendant no.2 is the daughter of said Sakhare. Defendant no.1 is husband of defendant no.2. Perusal of paragraph 2 of the plaint does not remotely indicate that the plaintiff has alleged that defendants no.1 and 2 are in unauthorised occupation of the suit premises. What is contended in paragraph 2 is that the original tenant Sakhare permanently shifted to Hadgaon, District Nanded. Defendants no.1 and 2 colluded with other defendants and inducted other sub-tenants. In short, plaintiff did not contend that defendants no. 1 and 2 are trespassers. Apart from that, the said contention was not even agitated before the Courts below. For all these reasons, I do not find any merit in the submission of Mr. Deshmukh that the suit is liable to be dismissed on the ground that there is no relationship of landlord and tenant between the parties.

7. As far as the availability of the other premises are concerned, perusal of the impugned orders does not indicate that defendant no.2 contended availability of premises in two storeyed building standing in the name of the plaintiff's mother. What was agitated was about the availability of the premises at Sangola. The Courts below have considered this aspect and have held that the suit premises is situated at Pandharpur. The plaintiff and his wife are aged and other brothers of the plaintiff are residing near the suit premises. All daughters of the plaintiff are

married and are residing at their respective matrimonial places. Thus, the requirement of the plaintiff to stay at Pandharpur with relatives at this stage cannot be considered as unreasonable and malafide. Even in the Appeal Memo, the defendants did not allege that the trial Court failed to consider the availability of the premises in two storeyed building standing in the name of the plaintiff's mother. In view thereof, I do not find that the Courts below committed any error in decreeing the suit under section 16(1)(g) as also answering the issue of comparative hardship in favour of the plaintiff.

8. As far as arrears of rent is concerned, the Courts below have decreed the suit on this ground. In particular, the Appellate Court has considered this aspect in paragraphs 19 and 20 and has observed that the defendant has not complied the requirement of Section 15 of the Act. The defendants were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of evidence on record, no reasonable person would have come to the conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

(R.G.KETKAR, J.)