

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 2720 OF 2016**

Madhukar Amrutrao Kondane

..Petitioner

Vs.

Santosh Chandrakant Barke & Ors.

..Respondents

Mr. S. R. Ronghe for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 15th FEBRUARY, 2016**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 9-12-2015 passed by the Learned District Judge-19, Pune, by which order, the Appeal filed by the Petitioner being Civil Appeal No.12 of 2015 , came to be dismissed and resultantly the decree passed by the Trial Court by judgment and order dated 6-8-2014, came to be confirmed.

2 The suit premises are two rooms each admeasuring 100 sq.ft. on the ground floor of the building which is owned by the Plaintiffs. The Suit was filed on the ground of the bonafide requirement of the mother of the Plaintiff No.1 Laxmibai who at the relevant time was around 75 years of age and was suffering from a knee joint pain and ailment of vertebra. It was the case of the

Plaintiffs that the residence on the first floor was highly inconvenient to the said Laxmibai as she has problem going up the stairs. In the plaint the Plaintiffs seem to have relied upon a medical report. The Defendants set up their defence that the Plaintiffs already have three large rooms in their possession on the first floor and therefore do not require the ground floor premises. The Suit proceeded to trial. On behalf of the Plaintiffs evidence of the Plaintiff No.1 was led. On behalf of the Defendants evidence of the Petitioner was led.

3 The Trial Court on the basis of the material on record came to a conclusion that the Plaintiffs have made out a case on the ground of bonafide requirement of the Plaintiff No.2 who was more than 75 years of age. The Trial Court did not countenance the submission urged on behalf of the Defendants that there was no evidence on record to substantiate the case of the Plaintiffs as regards the physical disability of the Plaintiff No.2 to climb the stairs etc.,. The Trial Court observed that the fact that the Plaintiff No.2 Laxmibai is more than 75 years being not disputed, it would have to be assumed that the said Laxmibai suffers from ailments which can be said to be ailments suffered by the persons of the said age. In so far as hardship is concerned, the Trial Court held that the Defendant No.1 has various premises, namely two flats at Nana Peth, Pune purchased by his wife, one flat at Katraj and one flat in the name of the son at Vishrantwadi, Pune. The Trial Court therefore held that the Defendants are in position to make alternate arrangements and therefore the

hardship will be more on the Plaintiffs if the decree is not passed than on the Defendants if the decree is passed. The Trial Court accordingly answered the issue of bonafide need of the Plaintiffs as also comparative hardship in favour of the Plaintiffs. The Trial Court accordingly by judgment and order dated 6-8-2014, decreed the Suit.

4 The Defendants carried the matter in Appeal by way of Civil Appeal No.12 of 2015. The Lower Appellate Court on a re-appreciation of the material on record did not find it appropriate to differ with the findings recorded by the Trial Court. The Lower Appellate Court reiterated the findings of the Trial Court on the basis that the Plaintiff No.2 i.e. the mother of the Plaintiff No.1 was more than 75 years of age and being of that age it would have to be presumed that old aged persons are usually suffering from knee joint pains and ailments of vertebra. The Lower Appellate Court observed that even if an old aged person is not suffering from such ailments, it is painful for him to climb up and down the staircase. The Lower Appellate Court also confirmed the findings of the Trial Court as regards the comparative hardship is concerned and adverted to the fact that the Defendant No.1's wife was having two flats in Nana Peth, one flat at Katraj and one flat at Vishrantwadi and therefore confirmed the findings of the Trial Court that hardship would be caused more to the Plaintiffs if the decree is not passed than to the Defendants if the decree is passed.

5 The Learned Counsel appearing on behalf of the Petitioner / Defendant No.1 Mr. Ronghe would seek to urge the contentions which were urged on behalf of the Defendants in the Trial Court namely that there is no evidence on record to indicate the physical condition of the Plaintiff No.2. This was the principal contention urged on behalf of the Petitioner. The Learned Counsel sought to place reliance on the judgment of the Apex Court in the matter of **Hameedia Hardware Stores represented by its partner S Peer Mohammed Vs. B Mohan Lal Sowcar**¹ and the judgment of a Learned Single Judge of this Court in the matter of **Musaji Mohamadhi & Sons Vs. Mr. Gulamali Dadabhai Amreliwala**². In so far as the judgment of the Apex Court is concerned, the reliance is placed on the ground that it was the Plaintiffs to prove their need by leading evidence and in so far as the Judgment of the Learned Single Judge is concerned, the same is sought to be relied upon in support of the contention that it is for the landlord to prove the need and it is not for the court to substantiate its own view and to find out whether the need of the landlord is bonafide or not.

6 In my view, the contention of the Learned Counsel cannot be accepted. The Courts below have rightly presumed that considering the fact that the Plaintiff No.2 is 75 years of age, she must be suffering from ailments

1 AIR 1988 SC 1060

2 (2005)107 BomLR 179

which make it difficult for her to climb to the first floor. In my view, the judgments relied upon by the Learned Counsel for the Petitioner do not further the case of the Petitioner / Defendant no.1 in any manner. In the light of the concurrent orders passed by the Courts below no case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]