

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 308 OF 2016

Shri. Rajnikant Dhondu Todankar
And Ors

...Applicants

Versus

Shri. Subhash Vishwananth Todankar
and another.

...Respondents

With
Civil Application No.412 of 2016
In
Civil Revision Application NO. 308 OF 2016

....
Mr.Uday P. Warunjikar, i/b. Siddhesh A. Pilankar, Advocate for
the Applicants.
Mr.Madhav Jamdar, for Respondents No.1 and 2.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd August, 2016

P.C.

1. Heard Mr.Uday Warunjikar, learned Counsel for the applicants and Mr.Madhav Jamdar, learned Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as the 'defendants No.1 to 5' have challenged the judgment and decree dated 17.8.2009 passed by the learned Judge, presiding over Court Room

No.12 of the Court of Small Causes at Mumbai R.A.E. Suit No.1061/2007 as also judgment and decree dated 18.11.2015 passed by the Appellate Bench of Court of Small Causes at Bombay in (A-1) Appeal No.546/2009. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs', under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The Courts below directed the defendants to hand over vacant and peaceful possession of room No.7, Todankar Chawl No.28, D.D. Thakurwadi, situate at Datta Raul Marg, Dadar, Mumbai – 400 028 (for short, 'suit premises') to the plaintiffs within three months from the date of the order.

3. In support of this application, Mr.Warunjikar submitted that the suit premises is situate in an area which is declared as a slum area by notification dated 23.2.2006 Exhibit-46 issued under the provisions of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971. In absence of permission under Section 22 thereof, the suit itself is not maintainable. He has invited my attention to the notification dated 23.2.2006.

4. Mr. Warunjikar further submitted that in any case the plaintiffs are not the owners of the suit premises. In

support of this submission, he relied upon :

- (i) Power of attorney executed by Sudhir Bhai Thakur in favour of M/s.Reliance Realty dated 7.1.2012 which is registered on 25.1.2012.
- (ii) Memorandum of Understanding dated 1.11.2011 by and between Sudhir Bhai Thakur and M/s. Reliance Realty;
- (iii) Order dated 25.4.2014 passed by the Superintendent of Land Records and in particular clauses-1 and 2 of the operative part thereof.

Relying upon these documents, he submitted that the plaintiffs are not the owners of the suit premises and, therefore, they have no locus to maintain the suit against the defendants.

5. Mr. Warunjikar submitted that in the plaint, the plaintiffs pleaded the requirement of plaintiff No.2 Rajnikant Vishwanath Todankar and defendant No.6 Vijay Vishwanath Todankar. Neither plaintiff No.2 nor defendant No.6 entered into the witness box. Plaintiff No.1 Suhas Vishwanath Todankar was examined as PW-1. In paragraphs-7 and 9, he deposed requirement of plaintiff No.2 and defendant No.6. In paragraph-7, PW-1 deposed that the family of plaintiff No.2 comprises of himself, his wife Reshma, one growing son Sanket and two daughters

Harshada and Minal. They are residing in a single room admeasuring 90 sq. ft. The college going children of plaintiff No.2 require separate room for their studies and they find it extremely difficult to reside in the present accommodation (room NO.6) which admeasures 90 sq. ft. The family members of plaintiff No.2 require privacy and they require additional accommodation. In paragraph-9, PW-1 deposed that the family of defendant No.6 comprises of himself, his wife Varsha and two growing daughters Nikita and Vrushali. They are taking education and it is impossible to reside in one single room. Mr.Warunjikar submitted that in cross-examination PW-1 admitted that defendant No.6 Vijay Todankar is presently residing in newly constructed room in the suit chawl. Room No.4 is occupied by one Sawant and he has shifted to Bhyander. He denied the suggestion that Mr.Sawant handed over possession of room No.4 to him. He further deposed that room No.3 is occupied by other tenant by name Mr.Surve and that he had locked that room and went to reside in Virar. He admitted that he has not taken any action against S/Shri.Sawant and Surve for recovery of rooms No.4 and 3 respectively.

6. He further admitted that after filing of the suit, they have newly constructed room for defendant No.6 Vijay. PW-1 deposed that he is having sufficient space in

Chembur to reside with his family. He has also invited my attention to Civil Application No.412/2016 which is filed under Order XLI Rule 27 of C.P.C. for adducing additional evidence. Along with that application, order dated 12.7.2012 passed by the learned trial Judge in Marji Application No.474/2011 in R.A.E. & R. Suit No.2299/1981 is enclosed. He submitted that possession of room No.8 is taken by the plaintiffs and defendant No.6 sometime on or before 4.7.2011. Plaintiff No.1 has filed reply to the application. In paragraph-8, he stated that room No.8 is in possession of his daughters Vishakha and Shraddha. In paragraph-10 it is stated that plaintiff No.2 is residing with his wife Reshma, son Sanket and daughter Harshada. Inviting my attention to these aspects, he submitted that as new room is constructed in the suit chawl for defendant No.6, his requirement no longer subsists. As far as requirement of plaintiff No.2 is concerned, it has come on record that the plaintiffs have obtained possession of room No.8. Instead of said room being occupied by plaintiff No.2 and his family members, it is occupied by Vishakha and Shraddha, daughters of plaintiff No.1. In the cross-examination, plaintiff No.1 admitted that he is having sufficient space at Chembur to reside with his family. Daughters of plaintiff No.1 need not occupy room No.8. The said room will satisfy need of plaintiff No.2. He, therefore,

submitted that the need of plaintiff No.2 no longer subsists more so when one of his daughters Minal also got married during pendency of the proceedings. For all these reasons, he submitted that the Courts below were not justified in passing the decree of eviction against the defendants.

7. On the other hand, Mr. Jamdar supported the impugned orders. He invited my attention to paragraph-24 of the Appellate Court judgment. Appellate Court noted that during pendency of the appeal, the defendants took out application Exhibit-40 *inter alia* contending that as the plaintiffs have obtained possession of room No.8 during pendency of the appeal, the bonafide need no longer subsists. The plaintiffs filed reply Exhibit-44 and contended that room No.8 is in possession of Vishakha and Shraddha, daughters of plaintiff No.1. Mr.Jamdar submitted that despite obtaining possession of room No.8 which is in possession of daughters of plaintiff No.1, the bonafide requirement of plaintiff No.2 subsists. He submitted that room No.8 is occupied by daughters of plaintiff No.1 and not strangers. It, therefore, cannot be said that the requirement of plaintiff No.2 is satisfied on account of acquisition of room No.8. That apart, plaintiff No.2 is residing in room No.6 and the suit premises is room No.7. Having regard to this fact, he submitted that the Appellate Court rightly rejected the application Exhibit-40

filed by the defendants and held that the plaintiffs have made out a case of eviction under Section 16(1)(g) of the Act. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C..

8. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiffs have pleaded requirement of plaintiff No.2 and defendant No.6. Plaintiff No.1 examined himself. He reiterated the requirements of plaintiff No.2 and defendant No.6. Family of plaintiff No.2 comprises of himself, his wife Reshma, one growing son Sanket and two daughters Harshada and Minal. It appears that during pendency of the proceedings, Minal is married. Nonetheless plaintiff No.2's family consists of himself, his wife Reshma, son Sanket and daughter Harshada. They are college going children. In paragraph-7, PW-1 deposed that they require separate room for their studies and they find it extremely difficult to reside in room No.6, which admeasures 90. sq. ft. Family members of plaintiff No.2 require privacy and they require additional accommodation. As far as defendant No.6 is concerned, his family consists of himself, his wife Varsha and two growing daughters Nikita and Vrushali, who are taking education and who also find it impossible to reside in one single room. Their family also

require additional accommodation.

9. Perusal of cross-examination of plaintiff No.1 shows that he admitted that they have newly constructed room. It has also come on record that Mr. Sawant occupying room No.4 and Mr. Surve occupying room No.3 are not using the premises and that the plaintiffs have not taken any action against them. PW-1 has admitted that he is having sufficient space at Chembur to reside with his family and that his daughter are occupying room No.8 possession of which obtained sometime in July, 2011.

10. The moot question is whether the requirement of the plaintiff No.2 and defendant No.6 is satisfied by construction of a new room in suit chawl as also acquisition of room No.8 sometime in July, 2011. In my opinion, the answer has to be in the negative. As noted earlier, the family of plaintiff No.2 consists of his wife Reshma, one growing son Sanket and daughter Harshada. They are college going children. In paragraphs-7 and 8 of the plaint, the plaintiffs have set up requirement of plaintiff No.2 and defendant No.6. Paragraphs-7 and 8 of the plaint read thus:

“7. The Plaintiffs state that the plaintiff No.2 and Defendant No.6 require the suit premises Reasonably and Bonafide for the purpose of residence for themselves and

their family members. The plaintiffs state that the family of the Plaintiff No.2 comprises of himself, his wife Reshma, one son Sanket and 2 daughters viz. Harshada and Minal who are residing in Room No.6 which admeasures 90 sq. ft. and said accommodation is inadequate, not suitable and insufficient. The Plaintiffs state that the growing college children of Plaintiff No.2 require separate room for their studies and they find it extremely difficult to reside in the present premises and there is lack of privacy. The Plaintiff further states that they require privacy and their need for additional accommodation is greater and urgent. Hereto annexed and marked "Ex-A" is the Xerox copy of the Ration Card.

8. The plaintiff further states and submits that the Defendant No.6's family comprises of himself, his wife Varsha and 2 grown up daughters viz. Nikita and Vrushali who are also taking education and find it impossible to reside in one single room."

11. In view of paragraph-7 of plaintiff No.1's deposition, it cannot be said that by construction of additional room as also obtaining possession of room No.8, the requirement of plaintiff No.2 is satisfied. Paragraph-7 of the deposition reads thus :

"7. I say that the Plaintiff No.2 requires the suit premises reasonably and bonafide for the purpose of residence for himself and his family members. I say that the family of Plaintiff No.2 comprises of himself, his wife Reshma, one growing son Sanket and 2 daughters viz. Harshada and Minal. I say that

all these family members are residing in a single room which is admeasuring 90 square feet. I say that the said accommodation is inadequate, not suitable and insufficient. I say that the growing college children of the Plaintiff No.2 require a separate room for their studies and they find it extremely difficult to reside in the present accommodation which admeasures 90 sq. ft. only. I say that the family members of Plaintiff No.2 require privacy and they require additional accommodation. I say that the Plaintiff No.2 requires the suit premises urgently. I produce on record the original Ration card showing the names of the family members of Plaintiff No.2. I say that the contents of the ration card are true and correct. I say that the said ration card has been issued by the Government of Maharashtra bearing its seal. I pray that same be taken on record, exhibited, admitted in evidence and marked Exhibit "A"."

12. Mr. Warunjikar submitted that in view of acquisition of room No.8, the requirement of plaintiff No.2 does not survive. In view of the newly constructed room in the suit chawl, which is occupied by defendant No.6, the requirement of defendant No.6 also does not survive. It is not possible to accept this submission. It has come on record that plaintiff No.2 has one son by name Sanket and daughter Harshada. In paragraph-7 of the plaint, extracted hereinabove, plaintiffs specifically asserted that growing college going children of plaintiff No.2 require a separate room for their studies and they find it extremely

difficult to reside in the present accommodation (room No.6). The family members of plaintiff No.2 requires privacy and they require additional accommodation. This is reiterated in deposition by plaintiffs witness. As far as defendant No.6 is concerned, he has two growing daughters, namely, Nikita and Vrushali who are taking education. The children of plaintiff No.2 can very well use said premises being room No.7 for their studies which is next to room No.6 in occupation of plaintiff No.2. The children of defendant No.6 can very well use room No.8 for their studies, though it is presently occupied by the daughters of plaintiff No.1. Defendants No.1 to 5 have not brought any material on record to show that the children of plaintiff No.2 and defendant No.6 are not residing with them. They have also not brought on record any evidence to show that plaintiff No.1 has prohibited the children of either plaintiff No.2 or defendant No.6 from using room No.8. In the case of **Ragavendra Kumar v. Firm Prem Machinery and Co., AIR 2000 SC 534**, Apex Court held that in respect of suitability of premises to landlords requirement, the landlord is the best judge. In the case of **Shankar Bhairoba Vadangekar since deceased by his heirs and legal representatives v. Ganpati Appa Gatare, since deceased by his heirs and legal representatives, 2001(4) Bom.C.R. 806**, it is held that it is sufficient for landlord to

assert that suit premises are reasonably and bonafide required by him and onus is on tenant to show that suit premises are neither reasonably nor bonafide required by landlord. In the case of ***Sarla Ahuja v. United India Insurance Company Limited, AIR 1999 SC 100***, Apex Court held that the tenant is not to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises.

13. In view thereof it cannot be said that after acquisition of room No.8 and newly constructed room occupied by defendant No.6 in the suit chawl, their need does not survive.

14. Mr. Warunjikar submitted that the plaintiffs have not instituted suit against Mr.Sawant, tenant of room No.4 and Mr. Surve, tenant of room No.3 though it has come in the evidence of plaintiff No.1 that Mr.Sawant has shifted to Bhayander and Mr.Surve has shifted to Virar. I do not find any merit in the submission.

15. It is however material to note that the defendants have not brought on record any evidence as to since when S/Shri.Sawant and Surve are not residing in their respective premises. The defendants ought to have brought evidence on record to show that S/Shri Sawant and Surve

had left the premises much prior to institution of the Suit. However, no such attempt was made by the defendants.

16. As far contention that the suit is not maintainable as the suit premises is situate in a slum area is concerned, perusal of notification published in Maharashtra Government Gazette on 23.2.2006 shows that Final Plots No.882, 882B, 882C were declared as slum area. The suit premises is situate in Final Plot No.882D. In other words, the suit premises does not fall in an area which is declared as a slum area. Equally I do not find that the power of attorney dated 7.1.2012, Memorandum of Understanding dated 1.11.2011 as also order dated 25.4.2014 establish that the plaintiffs are not the owners of the suit premises. In fact during pendency of the proceedings, Mr. Subhash Thakur filed application for impleadment which was allowed by the trial Court and said order was set aside by this Court in Writ Petition No.2618/2013 decided on 25.8.2015. Apart from that in paragraph-6 of the written statement, the defendants admitted that the plaintiffs and defendant No.6 are the owners of chawl No.28, D.D. Thakurwadi, situate at Datta Raul Marg, Dadar, Mumbai – 400 028. In view thereof, it cannot be said that the plaintiffs are not the owners and consequently they have no locus to maintain the suit.

17. Defendants No.1 to 5 were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. Defendants No.1 to 5 were not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Court below. Hence no case for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs. In view of dismissal of C.R.A., Civil Application No.412/2016 does not survive and same also stands disposed of.

18. At this stage, Mr. Warunjikar orally applies for stay of this order for a period of twelve weeks from today. Mr. Warunjikar states that the defendants No.1 to 5 are in possession and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents oppose said prayer.

19. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be served by staying operation of this order for a period of twelve weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within two weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any to the respondents within two weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

20. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of 12 weeks from today, subject to the applicants filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from

today, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)