

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

CIVIL REVISION APPLICATION NO.418 OF 2014

M/s. Mansukhlal Narayandas and others .. Applicants

Versus

Gangubai Vitthal Kajale

(Deceased Through LR's)

Balkrishna Vitthal Kajale and another .. Respondents

Mr. G. R. Agrawal, for the Applicants.

Mr. M. S. Karnik a/w Mr. N. M. Pujari, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 6th JANUARY 2016

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the judgment and order dated 24.01.2014 passed by the Learned District Judge-5, Nashik, by which order the Appeal filed by the Applicants being Civil Appeal No.183 of 2008 came to be dismissed and resultantly, the judgment and decree dated 29.08.2008 passed by the Trial Court i.e. the Learned 6th Joint Civil Judge, Junior Division, Nashik came to be confirmed.

2. The Applicants herein are the original Defendants and the Respondents herein are the heirs of the original Plaintiff Gangubai Vitthal

Kajale. The suit premises is a shop admeasuring 294 sq.ft. situated in Municipal House No.804 in City Survey No.7574C of Nashik. The Applicants are doing retail business of steel items in the suit premises. The mother of the Respondents Gangubai Vithal Kajale had acquired the suit shop along with some other property as per the Will of her husband Vithal Kajale. The said Vithal Kajale has purchased the suit property on 18.05.1959 by registered Sale Deed from one Pandharinath and others.

3. The suit in question being Regular Civil Suit No.380 of 2007 was filed by the Plaintiff seeking eviction of the Applicants inter-alia on the ground of bonafide requirement, arrears of rent and carrying out permanent construction. The parties went to trial and led evidence in assertion of their respective cases. In so far as the issue of arrears of rent and permanent construction is concerned, the same was answered against the Plaintiff. It is by answering the issue of bonafide requirement of the Plaintiff that the suit was decreed by the Trial Court by answering both the issues i.e. bonafide requirement and comparative hardship in favour of the Plaintiff. In so far as the issue of bonafide requirement and comparative hardship is concerned, the Plaintiff examined Ramesh Vithal Kajale who is son of the Plaintiff, Sachin Ramesh Kajale who is the grandson of the Plaintiff and Shyam Balkrishna Kajale who is another grandson of the Plaintiff. On behalf of the Defendant, the Defendant examined himself as

also Ashish Kantilal Patel. The case of the Plaintiff is that she required the premises bonafide as her grandsons have become major and they are required to be settled in business. It has come in the evidence of the Plaintiff that grandsons Sachin and Shyam have acquired skills to carry out the business of goldsmith and that the premises are required by them for carrying out the business of making jewellery and selling the same. It has come on record that Ramesh is carrying on business of goldsmith at another place in a rented premises, where Sachin and Shyam are assisting him. It is on the basis of the said evidence that the Trial Court came to a conclusion that the requirement of the Plaintiff is bonafide and is not merely a desire. The contentions urged on behalf of the Defendants that the son of the Plaintiff Balkrishna Kajale has acquired flat in Tulja Arcade, wherein the business of goldsmith can be done was not countenanced by the Trial Court on the ground that a residential premises cannot be used for commercial purposes. The Trial Court also did not accept the contention raised on behalf of the Defendants that since Ramesh, Sachin and Shyam are doing business together in a rented premises, there is no need for seeking possession of the suit premises. The Trial Court held that merely because they were doing business in the rented premises would not mean that they are not entitled to seek possession of their own premises. The Trial Court also adverted to the judgment of a Learned Single Judge

of this Court reported in 2002(4) Mh. L.J. Page 473 in the matter of Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and another, wherein the Learned Single Judge has held that it is not for a tenant to dictate as to how the landlord has to use the premises which are of his ownership. The Trial Court accordingly answered the issue of bonafide requirement in favour of the Plaintiff. In so far as comparative hardship is concerned, it has come on record that the Defendant has two shop premises one at Arya Kashatriya Mangala Karyalaya Building and another at Narayani Complex, wherein the Defendant was carrying out wholesale business. The said shop premises are situated at a distance of 100 meters and 600 meters from the suit premises respectively. The Trial Court has also adverted to the fact that in the lane of Narayani Complex one Ambika Steel is also doing business. The Trial Court held that considering the fact that the Defendant has the said two premises, greater hardship would be caused to the Plaintiff if the decree of possession was not passed than to the Defendant if the suit was decreed. Hence, the issue of comparative hardship was also answered in favour of the Plaintiff.

4. The Defendants aggrieved by the judgment and decree dated 29.08.2008 passed by the Trial Court carried the matter in Appeal by way of Civil Appeal No.183 of 2008. Since the suit was decreed on the ground of bonafide requirement, the Lower Appellate Court went threadbare into

the evidence which was on record and on a re-appreciation of the said evidence concurred with the finding of fact record by the Trial Court as regards the ground of bonafide requirement and comparative hardship. The Lower Appellate Court has adverted to the fact that the Defendant has two premises which are at a distance of 100 meters and 600 meters from the suit premises wherein the Defendant can carry out business, whereas the son and the grandsons of the Plaintiff do not have any premises of their own. The Lower Appellate Court therefore did not deem it appropriate to interfere with the decree passed by the Trial Court and accordingly dismissed the Appeal by the impugned judgment and order dated 24.01.2014.

5. The Learned Counsel Mr. G. R. Agrawal appearing for the Applicants i.e. original Defendants would contend that Balkrishna i.e. father of Shyam has acquired a commercial premises which he has given on leave and licence basis and therefore the said fact impacts the requirement of the said Shyam. The Learned Counsel by relying upon the evidence of Sachin would contend that Sachin having admitted that all three are doing business at rented shop at another premises, the said fact belies the case of the Plaintiff as regards the bonafide requirement on account of her grandsons. In my view, it is not possible to accept the said contention. Assuming that Balkrishna has acquired some commercial

premises and he has let out on leave and licence basis, his son Shyam cannot have a right over the said premises. The Plaintiff Gangubai Kajale who is the grandmother of Shyam has filed the suit in question on the ground of need of her grandsons and therefore the said fact of Balkrishna letting out the premises on leave and licence basis cannot have any effect in so far as the need of Shyam is concerned. In any event the need was of the son Ramesh and the two grandsons i.e. Sachin and Shyam. It is also required to be noted that the said commercial premises acquired by Balkrishna are at Gangapur which is at a distance of 3 to 4 kilometers from the suit premises. When the Defendants are not agreeable to carry out business in the shops owned by them which are hardly at a distance of 100 meters and 600 meters from the suit premises, they cannot expect one of the grandsons of the Plaintiff to go to a distance of 3 to 4 kilometers to set up the goldsmith business. In so far as the evidence of Sachin is concerned, he at the highest states that all three i.e. Ramesh, Sachin and Shyam are doing business in the shop wherein they are presently carrying out their business that cannot mean that the son of the Plaintiff Ramesh and the grandsons Sachin and Shyam can be compelled to carry out business jointly in the premises rented by Ramesh. It also cannot be interpreted to mean that the Plaintiff does not require the suit shop. Both the Courts below having recorded a finding of fact on the aspect of

bonafide requirement as also comparative hardship, in my view, the same does not merit any interference in the Revisionary Jurisdiction of this Court. The Civil Revision Application is accordingly dismissed.

6. The Learned Counsel for the Applicants states that the statement made by the Learned Counsel for the Respondents that they would not proceed with the execution for a period of two weeks from date be continued. The Learned Counsel Mr. M. S. Karnik appearing for the Respondents states that the said statement would be continued for a period of two weeks from date i.e. up to 20.01.2016.

[R.M. SAVANT, J]