

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

CIVIL REVISION APPLICATION NO.512 OF 2016

Suvarna Santosh Sutar and Others Petitioners

versus

Baburao Malakarjun Ligade ... Respondent

Mr.G.N. Salunkhe i/b. Mr.Umesh Kurund for the applicants.
Mr.Abhaykumar Apte for the Respondent No.1.

CORAM : R.G. KETKAR, J.
DATE : 17th OCTOBER, 2016

PC. :

1. Heard Mr.G.N. Salunkhe, learned Counsel for the applicants and Mr.Abhaykumar Apte, learned Counsel for the respondent No.1 at length.

2. By this Application u/s 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants hereinafter referred to as 'defendants No.2(A), 2(B) and 2(C)', have challenged the judgment and decree dated 05/06/2012 passed by the learned Civil Judge, Junior Division, Barshi at Barshi in Regular Civil Suit No.502 of 2004 as also the judgment and decree dated 16/03/2016 passed by the learned District Judge, Barshi at Barshi

in Civil Appeal No.268 of 2012. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff' under Section 16(1)(e) and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Plaintiff instituted the Suit against defendant No.1 - Subhadrabai Bhagwan Sutar and defendant No.2 - Santosh Rangnath Sutar, since deceased, through his heirs and legal representatives - defendants No.2(A) to 2(D). Mr.Rangnath Sutar, father of defendant No.2- Santosh Rangnath Sutar and husband of defendant No.3 - Sindhu Rangnath Sutar, is brother of defendant No.1 - Subhadrabai Bhagwan Sutar. Plaintiff claims possession of two rooms situate at C.T.S.No.2502, more particularly described in paragraph No.2 of the plaint (for short 'suit premises') from defendants inter alia contending that defendant No.1 Subhadrabai Sutar is tenant of the suit premises. She was in arrears of rent from 01/04/2000 to 31/07/2004. Defendants have carried out additions and alterations of permanent nature without written permission from the plaintiff; defendant No.1 has unlawfully sublet the suit premises to the defendants No.2 and 3; and that plaintiff requires the suit premises reasonably and bonafide. In

short, plaintiff claims possession invoking grounds under Sections 15, 16(1)(b), 16(1)(e) and 16(1)(g) of the Act. The Court below decreed the Suit u/s 16(1)(e) and 16(1)(g) of the Act. Aggrieved by these orders, defendants 2(A) to 2(C) have preferred this C.R.A.

4. In support of this Application, Mr.Salunkhe contended that in paragraph No.7 of the plaint, the plaintiff has himself averred that defendants No.2 and 3 are relatives of defendant No.1. Mr.Rangnath Sutar is father of defendant No.2 - Santosh Rangnath Sutar and husband of defendant No.3 - Sindhu Rangnath Sutar. He is brother of defendant No.1. Defendants No.1, 2 and 3 are jointly residing in the suit premises. In other words, defendants No.2 and 3 are not in exclusive possession of suit premises or any part of the suit premises.

5. As far as the ground u/s 16(1)(g) of the Act is concerned, Mr.Salunkhe submitted that it has come on record that plaintiff obtained possession of one room from erstwhile tenant Ms Kalawati Eknath Giram. Plaintiff - Baburao Mallikarjun Ligade admitted in cross examination that he had sold 47.82 sq.ft. from CTS No.2510/F to one Mr. Satish Kantilal Bora on 24/05/2006. Remaining portion of the City Survey No.2510/F is in

possession of the plaintiff. He has submitted that having regard to the properties in possession of the plaintiff, the Courts below are not justified in holding that the plaintiff has established his requirement. He submitted that the Courts below ought to have held that the requirement set up by the plaintiff is neither reasonable nor bonafide. He, therefore, submitted that the Application requires consideration.

6. On the other hand Mr.Apte supported the impugned orders. He submitted that the Courts below have decreed the Suit after considering the evidence on record. So far as sale of portion of City Survey No.2510/F is concerned, he submitted that the Sale Deed was executed in the year 2001 and entry of sale deed was given effect to in property extract in the year 2005. Learned District Judge has considered this aspect in paragraph No.18. It is observed that, the property extract at Exh.169 of C.T.S.No.2510/F demonstrates that the Sale Deed was executed on 11/05/2001 and the entry was given effect on 24/06/2005. This transaction had taken place much prior to filing of the Suit. He therefore submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below have decreed the Suit under Sect 16(1)(e) and 16(1)(g) of the Act. So far as ground u/s 16(1) (e) of the Act is concerned, learned Trial Judge has considered this aspect from paragraphs No.9 to 11. In paragraph No.11, the learned Trial Judge observed that defendant No.1 was receiving allowance from Government under Sanjay Gandhi Niradhar Yojana. Under the scheme, allowance is given to such persons, having no family members to look after them. Plaintiff filed a copy of the application for grant of allowance under that scheme made to Tahsildar and the statement recorded at Ex.57-A. Plaintiff also examined P.W.5 Ramesh Anna Waghmare at Ex.57. Learned Trial Judge observed that on going through the statement of defendants No.1, it revealed that she specifically stated that she has no relatives. The proceedings of that scheme are sufficient to falsify the contention of the defendants that they are residing in the joint family and that defendant No.2 looked after defendant No.1 till her death. On death of defendant No.1, the tenancy will not devolve on defendants No.2 and 3. The learned Trial Judge also held that defendants No.2(a), 2(b) and

2(d) and defendant No.3 were residing in the suit premises being legal representatives of defendant No.2 and not of defendant No.1. The learned Trial Judge, therefore, held that defendant No.1 sublet the suit premises to defendants No.2 and 3 without any authority.

8. So far as the appellate Court is concerned, this aspect is considered from paragraphs No.11 to 16. In paragraph No.11 learned District Judge observed that defendant No.1 was receiving benefit of Sanjay Gandhi Niradhar Yojana w.e.f. 05/01/1985. In the application submitted by defendant No.1 for availing the benefit of the said scheme, she specifically and categorically stated that she is not having any near relatives. The learned District Judge also considered the evidence of PW.5 Mr. Ramesh Anna Waghmare at Ex.57, who at the relevant time was working as Awwal Karkoon in Tahsil Office, Barshi. In paragraph No.12, the learned District Judge has considered ration card at Ex.124 of defendant No.3 Sindhubai, which shows that she was residing in the suit premises with her family consisting of herself, her son and daughter in law. Defendant No.3 started receiving benefit of Shravanbal Yojana with effect from 2004. The learned District Judge therefore recorded a categorical finding that defendants

No.2 and 3 were inducted in the suit premises for the first time in the year 2004. The learned District Judge has recorded a categorical finding of fact which cannot be interfered with while exercising power under Section 115 of C.P.C. Thus, the Courts below after appreciating the evidence on record have concurrently held that defendant No.1 unlawfully sublet the suit premises to defendants No.2 and 3 and accordingly decreed the Suit under Section 16(1) (e) of the Act.

9. As far the ground u/s 16(1)(g) and comparative hardship is concerned, the learned Trial Judge has considered this aspect from paragraphs No.13 to 16. In paragraph No.15 the learned Trial Judge considered the submissions advanced on behalf of plaintiff that plaintiff wants to demolish entire property on City Survey No.2502 and wants to construct a new building. He also filed a copy of sanction plan of construction at Ex.99. Plaintiff also examined Mr.Bharat Shankar Baravkar at Ex.98. Mr.Salunkhe submitted that the said evidence is beyond the pleadings of the plaintiff and the learned Trial Judge was not justified in holding that the plaintiff is entitled to possession of the suit property for residence of his son and to rebuild.

10. The learned District Judge has considered this ground from paragraphs No.17 to 20 and the comparative hardship in paragraph No.21. In paragraph No.17, the learned District Judge noted the members in the family of the plaintiff as also the fact that plaintiff's daughter namely Rajashree Kathale is deserted by her husband and she is residing with plaintiff together with her daughter Renuka. The learned District Judge also considered the evidence of plaintiff where it was stated that grandchildren of plaintiff are taking education and children of elder son have attained marriageable age. The learned District Judge noted that area of CTS No.2205 is 440 sq.ft. which is not sufficient for their residence. One of the sons of plaintiff, Manmath, is compelled to stay as licensee in the premises of Saroja Gaikwad.

11. Learned District Judge considered the fact that the plaintiff had sold 47.02 sq.ft. area of CTS No.2510/F to Satish Bora. In paragraph No.18, learned District Judge has held that the sale deed was registered on 11/05/2001 and entry was given to effect on 24/06/2005. Mr.Salukhe submitted that remaining portion of CTS No.2510/F is still in possession of the plaintiff. I do not find any merit in the submissions. Defendants have not

brought on record the remaining area in possession of the plaintiff and whether the said property is suitable and sufficient to meet requirement of plaintiff's family. Equally defendants have not brought any material on record to substantiate that requirement of the plaintiff does not survive after obtaining plaintiff possession of one room from erstwhile tenant Ms Kalawati Eknath Giram. Having regard to the members in the family of plaintiff consisting of three married sons, their wives and grandsons, I do not find that the Courts below committed any error in decreeing the suit also under section 16(1)(g) of the Act. The finding recorded by the Courts below are based upon evidence on record. Defendants were not in a position to demonstrate that the findings given by the Court below are perverse being based upon no evidence or that they are contrary to evidence on record. Defendants were also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusions other than those arrived at by the Courts below. Merely because on the basis of evidence on record another view is possible that itself is no ground for invocation of powers under section 115 of C.P.C. In the result, C.R.A. fails and the same is dismissed.

(R. G. KETKAR, J.)