

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9771 OF 2015**

Laxmibai Narayan Manchekar

..Petitioner

Vs.

Ravikiran Kashinath Naik & Ors

..Respondents

Ms Manjiri Parasnis for the Petitioner

Mr. R. D. Soni i/b Ram & Co. for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 17th FEBRUARY, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 3-7-2015 passed by the Lower Appellate Court i.e. the Learned District Judge-2, Alibag, Raigad, by which order, the Appeal filed by the Petitioner being Civil Appeal No.61 of 2010, came to be dismissed and resultantly the judgment and order dated 31-3-2010 passed in Regular Civil Suit No.115 of 2009 came to be confirmed.

2 The Suit in question was filed by the Respondent No.1 original Plaintiff seeking eviction of the Petitioner / Defendant on the ground of bonafide requirement and change of user. The bonafide requirement was that of the Plaintiff who was intending to conduct shorthand classes in the suit premises after his retirement. The Plaintiff was at the relevant time working as Stenographer in the Zilla Parishad, Alibag, District Raigad. It was the case of

the Plaintiff that the Defendant Laxmibai and her son were carrying out the business of selling milk in the suit premises which is a room admeasuring 60 sq.ft. in the house owned by the Plaintiff. It was the case of the Plaintiff that the Defendant was not residing in the said premises and that she was residing at Vaidhya Wada which is an adjacent locality to the locality wherein the suit premises is located and that it is her son Kiran who is carrying out the business of milk in the said room. The Suit proceeded to trial and in so far as the Plaintiff is concerned, apart from himself the evidence of the witness from the H.P. Gas Agency, Alibag Urban Co-op Bank as also the witness from LIC, Pen Branch, was led. In so far as the Defendant is concerned, the evidence of her son Kiran who was her power of attorney and the evidence of one more witness one Zore who as the friend of the said Kiran was led. The Trial Court on the basis of the evidence on record held that the Plaintiff has proved that he bonafide requires the premises in question. The Trial Court on the basis of the evidence of the three witnesses i.e. the two witnesses who are examined on behalf of the Plaintiff and on the basis of the admissions in the evidence of the witnesses of the Defendant came to a conclusion that the Defendant's two sons Dhananjay and Kishore are residing at Gondhal Pada and that the Defendant is residing at Vaidhya Wada and that Kiran was residing at Vaidhya Wada behind Mayur Bakery. In so far as comparative hardship is concerned, the Trial Court adverted to the fact that Kishore in his capacity as Karta of the family had applied for the allotment of a plot of land from the Grampanchayat, the said

Kishore was allotted a plot wherein construction of 1209 sq.ft. has been put up. The Trial Court observed that the denial by the Defendant of the fact that the plot was allotted to the family for residence was not convincing. The Trial Court held that since Laxmibai was residing at Vaidhya Wada and since Kiran was also residing at Vaidhya Wada behind Mayur Bakery and also has another premises at Vishwe, the hardship would be more on the Plaintiff if the decree is not passed than on the Defendant if the decree is passed. However, in so far as the ground of change of user is concerned, the Trial Court recorded a negative finding against the Plaintiff.

3 The aggrieved Defendant carried the matter in Appeal by way of Civil Appeal No.61 of 2010. The Lower Appellate Court on a re-appreciation of the material on record and especially having regard to the admissions which have come on record in the evidence of the said Kiran, came to a conclusion that the findings recorded by the Trial Court on the said basis cannot be faulted with. The Lower Appellate Court has also referred to the factum of the two sons of the said Laxmibai i.e. Dhananjay and Kishore residing at a different place as also the third son Kiran who was the power of attorney of the Defendant was residing at Vaidhya Wada and that he was also having premises at Vishwe, came to a conclusion that the findings of the Trial Court on the point of hardship also could not be faulted with. The Lower Appellate Court accordingly by the impugned judgment and order dated 3-7-2015 dismissed

the Appeal.

4 It is the submission of the Learned Counsel appearing on behalf of the Petitioner Ms Parasnis that the Lower Appellate Court has not recorded its own findings though as an Appellate Court it was required to do so. In support of the said contention, the Learned Counsel sought to place reliance on the Judgment of the Apex Court in the matter of **Madhukar & Ors. Vs. Sangram & Ors.**¹ and the judgment in the matter of **Santosh Hazari Vs. Purushottam Tiwari (Deceased) By LRS.**² It is next contended by the Learned Counsel that since the Plaintiff has set up his case of bonafide requirement on the basis of using the suit premises for commercial purposes the Suit itself was not maintainable as the premises in question are meant for residential user. In support of the said contention the Learned Counsel sought to place reliance in judgment of the Apex Court in the matter of **Bapubhai Mohanbhai Vs. Mahila Sahakari Udyog Mandir**³.

5 Per contra the Learned Counsel for the Respondent original Plaintiff Mr. R.D.Soni would support the decree passed by the Trial Court as confirmed by the Lower Appellate Court. The Learned Counsel would contend that the findings of fact recorded by the Trial Court as confirmed by the Lower Appellate Court are on the basis of the evidence which has come on record.

1 (2001) 4 Supreme Court Cases 756

2 (2001) 3 Supreme Court Cases 179

3 (1975) 2 Supreme Court Cases 492

The Learned Counsel drew this Courts attention to the evidence of the three witnesses i.e. witness from HP Gas Agency, LIC and the witness of the Defendant one Zore to buttress his contention that the findings recorded by the Trial Court as confirmed by the Lower Appellate Court cannot be faulted with.

6 Having heard the Learned Counsel for the parties I have considered the rival contentions. As indicated above, there are concurrent orders passed by the courts below based on the concurrent findings of fact which the courts below have recorded on the basis of the material on record. The Trial Court has exhaustively referred to the evidence which has come on record and has adverted to the admissions which are appearing in the evidence of the power of attorney of the Defendant i.e. her son Kiran also the evidence of the witness from HP Gas Agency as also the evidence of the witness from LIC by referring to the admissions in the said evidence the Trial Court has concluded that the two sons of the Defendant i.e. Dhananjay and Kishore stay at a different place and that the power of attorney of the Defendant Kiran who is the third son is also residing at Vaidhya Wada and has also another premises at Vishwe. It is on the basis of the said evidence that the findings of fact have been recorded as regards the bonafide requirement of the Plaintiff as also on the point of comparative hardship. The Lower Appellate Court has also adverted to the evidence which is on record and after adverting to the said evidence has also considered the submissions made on behalf of the

Respondents in the Appeal based on the said evidence and has recorded a finding that the said submissions were required to be accepted and has concluded that the finding recorded by the Trial Court therefore cannot be faulted with. The Lower Appellate Court has as indicated above confirmed the findings of the Trial Court and whilst confirming the findings though elaborate reasons may not have been given, the Lower Appellate Court has recorded a finding as to why it has confirmed the findings of the Trial Court.

7 In so far as the judgments in the case of Madhukar and others and Santosh Hazari (Supra) are concerned, in my view, the said judgments would not further the case of the Petitioner. This is a case where the Lower Appellate Court has confirmed the findings of fact recorded by the Trial Court. This is not a case where the Lower Appellate Court has disagreed with the findings of the Trial Court which would have entailed the Appellate Court to give detailed reasons as to why it disagrees with the findings of the Trial Court. It is trite that the Appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the Trial Court expression of general agreements with the reasons given by the Trial Court would generally suffice. In so far as the judgment in Bapubhai Mohanbhai's case is concerned, the said judgment would also have no application as in the instant case the suit premises is a room within the house of the Plaintiff and it is the case of the Plaintiff that after his retirement he desires to use the said

premises for holding classes for shorthand. Whether the said activity would amount to commercial user of the premises would be a matter for the appropriate authority to consider and at this stage it cannot be said that the Plaintiff desires to put the premises to commercial user. Both the Courts below having concurrently passed orders in favour of the Plaintiff and against the Defendant. In my view, the exercise of the Writ Jurisdiction is not warranted.

8 The Writ Petition is accordingly dismissed.

9 At this stage, the Learned Counsel for the Petitioner seeks stay of the decree for a period of four weeks so as to enable the Petitioner to take appropriate recourse. In the facts and circumstances of the case the appropriate order would be that the execution proceedings to go on but possession not to be handed over for a period of 4 weeks from date.

[R.M.SAVANT, J]