

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 523 OF 1998

Shri. Raghunath S. Dixit
(since deceased by his legal heirs
1A. Damodar R. Dixit
(since deceased by his Legal heirs
1A i] Seeta D. Dixit and ors.) .. Petitioners

vs.

Surendranath B. Burad (since
deceased by his legal heirs &
representatives
1a. Surekha S. Burad and ors.) .. Respondents

Mr. V. S. Gokhale for the Petitioners.
Mr. Milind M. Sathaye for Respondent Nos.1a to 1c.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 28 January 2016.
Date of Pronouncing the Judgment : 17 February 2016.

JUDGMENT :-

1] The challenge in this petition is to the judgment and decree dated 20 November 1997 made by the District Judge, Nashik dismissing the Petitioner's Regular Civil Suit No. 43 of 1986 seeking eviction of the Respondents from the suit premises.

2] The Petitioners-landlord, instituted Regular Civil Suit No. 43 of 1986 in the Court of Joint Civil Judge, Junior Division at Nashik (Trial Court), seeking eviction of the Respondents-tenants on various grounds, including *inter alia* default in payment of rent, unlawful

sub-letting, change of user and reasonable and *bonafide* requirement. The Trial Court, by its judgment and decree dated 13 April 1994, decreed the suit, *inter alia*, on the ground of unlawful sub-letting, reasonable and *bonafide* requirement and unauthorised change of user. In the Regular Civil Appeal No. 171 of 1994 instituted by the Respondents-tenants, the District Judge at Nashik (Appeal Court) has reversed the judgment and decree dated 13 April 1994 and dismissed the Regular Civil Suit No. 43 of 1986, hence the present petition.

3] Mr. V.S. Gokhale, learned counsel for the Petitioners, in the present case, has pressed for eviction of the Respondents-tenants on the grounds of unlawful subletting and reasonable and *bonafide* requirement of the landlords. Accordingly, there is no necessity to examine the ground of unauthorised change of user. On the aspect of unlawful subletting, Mr. Gokhale has submitted that the evidence on record, both oral as well as documentary very clearly establishes that the Petitioners-landlord had sub-let the suit premises to Respondent Nos.2 and 3, even though, the transactions was sought to be camouflaged as partnership. He pointed out that the Appeal Court has reversed the Trial Court mainly on the ground that the

Respondent Nos.2 and 3, ultimately, retired from the partnership and the possession of the suit premises was thereafter with Respondent No.1 tenants. Mr. Gokhale submitted that such subsequent restoration of possession, does not, wipe out the charge of unlawful subletting. The cause of action, once accrued, cannot be wiped out by such subsequent acts. Mr. Gokhale pointed out that the partnership in the present case, was merely a camouflage and further, since Respondent Nos.2 and 3 did not step into witness box, adverse inference ought to have been drawn against the Respondents. Mr. Gokhale submitted that once the Respondent Nos.2 and 3 were found to be in exclusive possession in the suit premises, the onus lay upon them to explain the capacity in which, they came into possession. This onus has not at all been discharged by Respondent Nos.2 and 3 and therefore, the Appeal Court exceeded jurisdiction in interfering with the well reasoned order made by the Trial Court.

4] Mr. Gokhale submitted that the Petitioners in this case, had placed on record ample evidence in the matter of personal, reasonable and *bonafide* requirement. The issue of comparative hardship was also required to be answered in favour of the

Petitioners. In this case, the premises were required to enable the Petitioner's son to undertake business therefrom. The non-examination of son, was by no means fatal. The Appeal Court was not at all justified in interfering with the well reasoned order made by the Trial Court.

5] Upon due consideration of the contentions raised by the learned counsel for the parties and perusing the material on record, in my judgment, no case is made out to interfere with the impugned judgment and decree made by the Appeal Court, which is, the final fact finding Court in a matter of this nature. Of course, if the findings of facts recorded by the Appeal Court are found to be perverse, it is certainly open to this Court to interfere with them. However, it has not been demonstrated that the findings of fact recorded by the Appeal Court are vitiated by perversity or that, there is non-consideration of relevant and vital material. Accordingly, it is not possible to interfere with the impugned judgment and decree made by the Appeal Court.

6] On the aspect of subletting, there is really no evidence with regard to Respondent No.2 and 3 being placed in exclusive

possession of the suit premises. It is well settled that *bonafide* partnership by a tenant, does not constitute sub-letting. However, if Partnership is entered into, only as a camouflage, to sub-tenancy, a decree of eviction can always be made on the ground of unlawful sub-letting. It is also settled position that where some stranger is found in exclusive possession of the suit premises, the onus is upon the original tenant and such stranger is to explain the capacity in which such stranger is in possession of the suit premises. However, in the present case, it cannot be said that Respondent Nos.2 and 3 were in exclusive possession of the suit premises or that the partnership was only a camouflage. If the partnership deed is perused, time and again, it has been reiterated therein, that the Respondent No.1 is and continues to be the tenant of the suit premises and that the partnership is only in relation to the business to be carried out from the suit premises. Time and again, it has been made clear in the deed of partnership that the partnership, is not to affect the tenancy rights of Respondent No.1 and that the partnership is only in the relation to the business carried out therefrom. In this case, Respondent No.1 was to have share of 30%, both, in the profits and losses of the firm. Upon consideration of this document as also the oral evidence on record, the Appeal Court has

rightly held that this was not a case of sub-tenancy. There is no perversity in regard of this finding of fact.

7] No doubt, the Appeal Court has also taken into consideration the deed of retirement. However, it is incorrect to say that the entire reasoning of the Appeal Court is based upon this subsequent retirement of Respondent Nos.2 and 3 from the partnership. Mr. Gokhale is right in his submission that cause of action, once accrued, cannot be wiped out by such subsequent act of retirement. However, the Appeal Court, has not held that the initial cause of action has been wiped out on account of such subsequent act. The Appeal Court has held that no cause of action had in fact accrued to the Petitioners to seek eviction on the ground of unlawful subletting. The circumstance with regard to retirement has been referred to, only to point out that consequent upon the retirement of Respondent Nos.2 and 3, the business which was carried out by the firm has been discontinued and Respondent No.1 has reverted to his earlier business. The reference is also in the context of exclusive possession never being with Respondent Nos.2 and 3. The reference is also in the context of the contention of the Petitioners that non-examination of Respondent Nos.2 and 3 was fatal. There is no case

made out to interfere with the findings of fact recorded by the Appeal court and such finding of fact is neither vitiated by perversity nor is this a case where any relevant and vital evidence has been overlooked.

8] On the aspect of reasonable and *bonafide* requirement, it is to be noted that the landlord had pleaded the case that the suit premises are required to enable his son Yeshwant, who was then serving at Baroda to commence business of electronics. In view of such a categorical plea, it was necessary that Yeshwant, who was said to be serving in Baroda, was examined or at least the Petitioners, should have adduced sufficient evidence on record to satisfy the Appeal Court that Yeshwant was indeed interested in leaving his service at Boarda and thereafter carrying on business of sale of electronic business from the suit premises. Although, it is not for the Court to either advise or even suggest the landlord in these matters, the landlords, has to establish that there is indeed a *bonafide* and reasonable requirement. For this purpose, in the facts and circumstances of this case, examination of Yeshwant was necessary. It was also necessary to place at least some material on record to establish that Yeshwant was indeed in a position, technical and financially to undertake a business of such nature. Unless, such

evidence was on record, there was no question of obtaining a decree on this ground. The Appeal Court has appreciated the material on record in its proper perspective.

9] The Appeal Court has also taken into consideration the circumstance that the Respondent's son had acquired some other business premises opposite the suit premises. This aspect, might have been relevant in the context of determining comparative hardship. However, the issue of comparative hardship can be gone into, once, the landlord succeeds in making out a case of reasonable and *bonafide* requirement. In the present case, since the landlord has not made out a case of reasonable and *bonafide* requirement, there was no question of adverting to this aspect. In any case, the material on record, also establishes that the alternate premises were not acquired by Respondent No.1, but rather they were acquired by his son who were residing separately and who had their own business and their own families to look after.

10] In the facts and circumstances of the present case, there is no case made out to interfere with the impugned order. This petition is dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)