

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

CIVIL REVISION APPLICATION NO.45 OF 2016

Smt. Shantabai Yadavrao Thitme

(deceased and deleted through her LR's)

Shri. Sainath Yadavrao Thitme and others

.. Applicants

Versus

Mr. Arun Vishwambhar Solse and others

.. Respondents

Mr. S. N. Chandrachood, for the Applicants.

Mr. Jaydeep Deo, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 22nd FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the judgment and order dated 06.11.2015 passed by the Learned 4th Adhoc District Judge & Assistant Sessions Judge, Pune. By the said order, Civil Appeal No.468 of 2009 filed by the Respondents herein i.e. the original Plaintiffs came to be allowed and the dismissal of the suit by the Trial Court by judgment and order dated 23.07.2009 came to be set aside and the suit in turn came to be decreed.

2. The suit in question being Regular Civil Suit No.205 of 2008 was filed for eviction of the Petitioners/original Defendants and for possession of the suit premises being two rooms admeasuring 10 ft. X 10 ft. each with separate toilet and bathroom, situated on the ground floor of CTS No.90, Raviwar Peth, Pune. The suit was founded on the bonafide requirement of the Plaintiffs. It was the case of the Plaintiffs that the property wherein the said two rooms are situated were originally shown as of the ownership of the Plaintiffs Solse's and the Mahajan's. However, it was the case of the Plaintiffs that partition took place between the parties. Subsequent to which the part of the property, wherein the suit premises are situated came to the share of the Plaintiffs and the other half share went to the share of the said Mahajan's. The bonafide requirement of the Plaintiffs is sought to be justified on the ground that the three Plaintiffs and their family members are residing in two rooms each. The total members of the Plaintiffs family are about eleven and the premises which are available to them including two rooms at Vithalwadi are insufficient to accommodate the Plaintiffs family which now consists of grown up children who also require room for their studies. It is also the case of the Plaintiffs that the children of the Plaintiffs have attained marriageable age, but on account of the paucity of accommodation their marriage cannot be solemnized.

3. The Defendants filed their written statement and admitted the fact that the Plaintiffs were landlords, but questioned the alleged partition which took place between the Plaintiffs Solse's and the Mahajan's. It was the case of the Defendants that though they are not entitled to challenge the partition, the said partition is sought to be questioned on the ground that the same has been got done so as to facilitate the filing of the suit on the ground of bonafide requirement. The suit proceeded to trial. The parties led evidence. In so far as the Plaintiffs are concerned, they led the evidence of three witnesses. In so far as Defendants are concerned, they have examined four witnesses. The Trial Court on the basis of the material on record dismissed the suit by judgment and order dated 23.07.2009. However, the Trial Court in so far as the aspect of partition is concerned recorded a finding that the factum of partition having taken place between the Plaintiffs Solse's and the Mahajan's would have to be accepted and the Defendants cannot question the said partition. The Trial Court, having regard to the accommodation available to the Plaintiffs came to a conclusion that the Plaintiffs have not made out a case of bonafide requirement so as to evict the Defendants from the suit premises. The Trial Court in the said process observed that the Plaintiffs are economically sound and have sufficient accommodation available with them, whereas Defendants except the two rooms admeasuring 10 ft. X 10 ft. each have no

other premises. The Trial Court observed that though the Plaintiffs have sufficient accommodation at their disposal, they have still filed the suit on the ground of bonafide requirement which ground cannot be accepted and as indicated above, by the judgment and order dated 23.07.2009 dismissed the suit.

4. The aggrieved Plaintiffs carried the matter in Appeal. The Lower Appellate Court on a re-appreciation of the material on record came to a conclusion that the Trial Court has erred in not accepting the ground of bonafide requirement on the basis that the Plaintiffs have adequate accommodation at their disposal. The Lower Appellate Court has adverted to the family members in each of the Plaintiffs family as also the children who are taking education as also the children who are of marriageable age and on such consideration came to a conclusion that even taking into consideration the premises at Vithalwadi, the premises available with the Plaintiffs are inadequate to accommodate such a large family. The Lower Appellate Court adverted to the fact that the Defendants were ready to take on rental basis the premises belonging to the Plaintiffs at Vithalwadi for which rent was Rs.2000/-. On the basis of the said statement, the Lower Appellate Court recorded a finding that the Defendants have the financial capacity to take another premises and therefore, there would not be any hardship, if the Defendants are asked to vacate the suit premises.

Hence, both on the ground of bonafide requirement as also on the ground of comparative hardship, the Lower Appellate Court has upset the order passed by the Trial Court.

5. The Learned Counsel appearing on behalf of the Applicants Mr. S. N. Chandrachood would seek to reiterate the case of the Applicants in so far as the aspect of partition, as also questioned the need of the Plaintiffs for additional premises. In my view, it is not possible to accept the said contentions of the Learned Counsel. In so far as partition is concerned, as indicated above, the Plaintiffs have buttressed their case by leading the evidence of Santosh Mahajan who is from the family of the joint owners i.e. the Mahajan's who deposed that the partition has taken place between the Plaintiffs and the Mahajan's. In so far as the need of the Plaintiffs is concerned, the Lower Appellate Court on the basis of the material on record has recorded a finding of fact that the accommodation available with the Plaintiffs is inadequate. In view of the said finding of fact recorded by the Lower Appellate Court, in my view, no case for interference in the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

6. At this stage, the Learned Counsel for the Applicants seeks reasonable time to vacate the premises. In the facts and circumstances of

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the case, Applicants are granted time up to 31.12.2016 to hand over possession of the suit premises. The same would be on the usual undertaking to be filed by all the adult members of the family of the Applicants within two weeks from date. If the undertaking is not filed as directed by the instant order, the Respondents would be free to execute the decree in accordance with law.

[R.M. SAVANT, J]