

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7323 OF 2015

Dhawal Mukesh Tekwani,
Age : 30 years, Occupation : Business,
R/o Navi Peth, Jalgaon,
Taluka and District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Mukund Devidas Kango,
Age : 70 years, Occupation : Retired,
R/o Navi Peth, Jalgaon,
Taluka and District Jalgaon.
- 2 Prem Gopichand Ahuja,
Age : 65 years, Occupation : Business.
- 3 Ashok Gopichand Ahuja,
Age : 52 years, Occupation : Business.

Respondent Nos.2 and 3
R/o "Swar Vihar", Near Natwar Talkies,
Navi Peth, Jalgaon.
Taluka and District Jalgaon.

...RESPONDENTS

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Advocate for Petitioner : Shri S.S.Bora h/f Shri Bhandari Anand P.
Advocate for Respondent 1 : Shri N.P.Dube.
Advocate for Respondents 2 and 3 : Shri K.C.Sant.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The Petitioner is aggrieved by the order dated 28.04.2015 passed by the Trial Court by which the applications Exhibits 109 and 110 filed by Respondent No.1 and the Petitioner, respectively, in RCS No.542/2002 have been rejected.

3 The Petitioner strenuously submits that the suit has been filed for eviction under the Maharashtra Rent Control Act. Recording of oral evidence has already commenced.

4 The original Plaintiff/ Respondent No.1 herein had preferred the application Exhibit-109 stating that he had sold the suit premises to the Petitioner by a registered sale deed dated 25.10.2010. He, therefore, prayed for substituting himself by the Petitioner/ Purchaser as the Plaintiff.

5 The Petitioner/ purchaser moved an independent application Exhibit-110 praying that he be transposed as Plaintiff in place of the original Plaintiff.

6 In both these applications, it is obvious that the purchaser desires to be the Plaintiff and the original Plaintiff desires to exit the proceedings. The Trial Court has rejected both these applications for the reason that the Plaintiff as well as the Petitioner have failed to satisfy as to which provision can be invoked and whether, the cause of action would survive in the present suit.

7 Learned Advocate for Respondent Nos.2 and 3 contends that it is necessary to scrutinize the purpose for which the suit was filed. The original Plaintiff had filed the suit for eviction putting forth primarily the ground of bonafide requirement coupled with the change of user and non payment of rent. He, therefore, submits that the bonafide requirement ground cannot be inherited by the Petitioner.

8 It is trite law that in such peculiar circumstances, except the ground of bonafide requirement, other grounds can be inherited by the subsequent purchaser of the suit property.

9 In the matter of Ambica Prasad vs. Alam and others, AIR 2015 SC 2459, the Honourable Supreme Court, while dealing with the eviction suit, has observed in paragraphs 18 and 19 as under:-

"18. *From perusal of the aforesaid Section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment.*

19. *As noticed above, the respondent-tenant on many*

occasions approached the appellant, the transferee, owner and the landlord to receive the rent. Further, admittedly, the electricity charges of the tenanted premises were paid by the tenant to the present appellant. Non-consideration of subsequent tenancy agreement executed by the erstwhile owner namely the brother of the appellant will not come in the way of the present appellant to seek eviction of the tenant on the ground of personal necessity as also on the ground of non-payment of rent. The approach of the High Court reversing the appellate court's finding cannot be sustained in law."

10 Learned Advocate for the Petitioner submits, on instructions, that the Petitioner would not canvass the ground of bonafide requirement as is put forth by the original Plaintiff and if required, an affidavit to this extent can be filed before the Trial Court.

11 Considering the above, this Writ Petition is partly allowed. The impugned order dated 28.04.2015 is quashed and set aside and applications Exhibits 109 and 110 are allowed. The Petitioner shall be arrayed as the Plaintiff in place of Respondent No.1/ original Plaintiff, in the suit. Needless to state, the Petitioner shall not canvass the ground of bonafide requirement that has been put forth by the original Plaintiff in the suit.

12 Rule is made partly absolute in the above terms.