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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.294 OF 2015

Ramchandra Chhagan Bhavsar
(since deceased through legal heirs)

APPLICANTS

- 1A. Indubai Ramchandra Bhavsar
(Since deceased)
- 1B. Jitendra s/o Ramchandra Bhavsar
Age – 56 years, Occ – Business,
- 1C. Mahendra s/o Ramchandra Bhavsar
Age – 54 years, Occ – Business
- 1D. Subhash s/o Ramchandra Bhavsar
Age – 50 years, Occ – Business
- 1E. Rajesn s/o Ramchandra Bhavsar
Age – 52 years, Occ – Business
- 1F. Kalpana Ramchandra Bhavsar
@ Kalpana Suresh Bhavsar
Age – 56 years, Occ – Household
- 1G. Chaya Ramchandra Bhavsar
@ Chaya Rajendra Bhavsar
Age – 51 years, Occ – Household
- 1H. Nanda Ramchandra Bhavsar
@ Nanda Manohar Bhavsar / Khanore
Age – 49 years, Occ – Household
- 1I. Mangala Ramchandra Bhavsar
@ Mangala Sailesh Bhavsar
Age – 45 years, Occ – Household

R/o Shri Ram Mandir Ward,
Bhusawal, Taluka – Bhusawal
District – Jalgaon

VERSUS

1. Ramdas Bharatdas Bairagi (deceased through legal heirs) RESPONDENTS

1A. Vimal Ramdas Vaishnav / Bairagi
Age – 71 years, Occ – Household

1B. Prashant Ramdas Vaishnav / Bairagi
Age – 31 years, Occ – Service

1C. Bharati Ramdas Vaishnav / Bairagi
Age – 33 years, Occ – Service

All R/o Near Motha Maruti Mandir
Shriram Mandir Ward, Bhusawal
Taluka – Bhusawal, District – Jalgaon

2. Kautik s/o Shankar Patil,
Age – 76 years, Occ – Nil
R/o Ram Mandir Ward, Bhusawal
Taluka – Bhusawal, District – Jalgaon

3. Anant Baburao Chandwadkar,
Age – 75 years, Occ – Nil
R/o Near Mamaji Talkies,
Bhusawal, Taluka – Bhusawal
District – Jalgaon

4. Kanhaiyalal Laxman Behara,
Age – 86 years, Occ – Nil
R/o Gangaram Plot, Bhusawal
Taluka – Bhusawal, District – Jalgaon

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Mr. F. K. Patel h/f Mr. P. R. Katneshwarkar, Adv. for applicants
Ms. Megha B. Vaishnav, Advocate for respondents No.1A to 1C

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 1st FEBRUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.

2. This is a revision by the tenants against concurrent decisions rendered by trial and appellate courts, whereunder the tenants have been directed to deliver vacant and peaceful possession of the tenanted premises to the plaintiff and an inquiry into mesne profits has also been ordered.

3. After hearing learned advocates for the parties, it emerges that a western side room, approximately having dimensions of 12' X 12' of a two storied building bearing Municipal House No.644 situated in CTS No.528 on northern side of Lord Maruti Temple in Shriram Mandir Ward, Bhusawal were rented out to one Ramchandra Chhagan Bhavsar by Ramdas Bharatdas Bairagi. Presently, parties hereto are legal heirs of aforesaid tenant Ramchandra Chhagan Bhavsar and deceased Ramdas Bharatdas Bairagi.

4. Ramdas Bharatdas Bairagi had instituted proceedings bearing Regular Civil Suit No.330 of 1979 seeking eviction of Ramchandra Chhagan Bhavsar contending that the premises

were let out to him at the rate of rent of Rs.20/- per month the tenant intentionally damaged the premises and that the landlord needs the suit premises *bonafide* and for reasonable requirement. A notice, accordingly had been issued in August, 1979 terminating tenancy and asking delivery of possession. However, the notice had not been responded to. As such, the suit came to be instituted for eviction as stated above. During pendency of the suit, the tenant had purchased residential property at Bhusawal and was contended to have shifted there and as such, had acquired suitable alternate accommodation and was not in need of the tenanted premises, accordingly issue in this respect came to be framed.

5. It appears that during pendency of the suit, the plaintiff – landlord as well as defendant No.1 – tenant died and their legal heirs were brought on record. The legal heirs of deceased tenant – defendant No.1 filed written statement and resisted the suit. It is contended that the plaintiff had been priest of Lord Shriram and Lord Hanuman temples. About thirty to forty years before, the premises were let out to defendant No.1 at monthly rent of Rs.20/-. It was denied that the plaintiff required the suit premises *bonafide* and reasonably. It was contended that the plaintiff has sufficient accommodation and the defendants do not

have any suitable alternate accommodation. It was further contended that if eviction is allowed, family of the defendants would come on road. The allegations of damage to the property had been denied. Subsequently, under an amendment, the defendants purported to oppose the claim of eviction by the plaintiff on the ground that the plaintiff is not owner of the suit property and the suit property being owned by Maruti Temple trust, which stands established by decision of court in Civil Miscellaneous Application No.32 of 1989.

6. Original defendants No.2 to 4 resisted the suit denying title of the plaintiff. It is further contended that the plaintiff was supposed to be Bramhachari Archak, however, he got married and as such, had vitiated the post and that he is not owner of the tenanted property. As such, prayed for dismissal of the suit.

7. The trial court had framed issues in respect of *bonafide* need of the plaintiff, about greater hardship to the parties, as to whether the defendants have damaged the property, whether the suit is tenable, whether the defendants are entitled to compensation and whether the defendants had acquired suitable alternate accommodation. The trial court considered that the landlord had failed to prove *bonafide* need and as such, there is

no question of consideration of greater hardship and further held that the plaintiff could not prove damage to suit property by the tenant and the suit was considered to be maintainable and the defendants were held not to be entitled to compensation and the other issues which were framed with respect to binding nature of decisions rendered by Charity Commissioner and in Civil Miscellaneous Application No.32 of 1989 and considered the same to be redundant. The trial court found that tenant is possessed of suitable alternate accommodation. The trial court, as such, partly decreed the suit granting decree of eviction, dismissing the suit of the plaintiff for damages and directing inquiry into mesne profits.

8. Legal heirs of deceased defendant No.1, went in further proceedings before District Court bearing Regular Civil Appeal No.33 of 2008 at Jalgaon. The appellate court had affirmed trial court's judgment holding the suit premises were not required by plaintiff *bonafide* and held that the defendants had not damaged the suit property. Appellate court also, however, found that defendant No.1 had acquired a suitable alternate accommodation and it went on to hold the proceedings to be maintainable and as such, dismissed the appeal.

9. Learned Advocate Mr. Patel holding for Mr. Katneshwarkar appearing on behalf of the applicants contends that while it has clearly emerged on record that the plaintiff is not at all owner of the suit premises, a decree of eviction in the proceedings set in motion at his instance is not proper and the whole proceedings are untenable. He contends that in view of decision in Civil Miscellaneous Application No.32 of 1989, it becomes uncontestable position that the plaintiff would not be owner and would not have any title to the property and as such, he would not be a landlord for whom eviction could have been directed. He further submits that both the courts have concurrently held suit premises are not required by the plaintiffs at all for *bonafide* purpose and the plaintiffs having come in possession and occupation of the premises, which were occupied by Mahajan and one Gaur.

10. Mr. Patel, learned advocate submits that there are nine members in the family of defendant No.1 and the members have grown up and married and so called alternate accommodation is not sufficient to accommodate the members with growing families. He, therefore, submits that the consideration which apparently has weighed with the courts, about tenants having secured alternate suitable accommodation would be wide apart

from the factual position. He, therefore, urges to reverse / set aside findings recorded with respect to plaintiffs being considered as landlord and eviction being granted on having acquired suitable alternate accommodation.

11. Miss Vaishnav, learned advocate appearing for legal heirs of plaintiff contends that in the revisional jurisdiction the High Court seldom may have power to unsettle findings of facts recorded by the trial court and confirmed by the appellate court, where there is no material adduced to show that appreciation of evidence by the two courts is not only erroneous but also is not adhering to the facts. She submits that the dispute being raised about ownership of premises by the plaintiff is of no significance whatsoever in the face of admitted position emerging that the landlordship of the plaintiff has been accepted in no uncertain terms by the defendants in the pleadings. Furthermore, she refers to that the decision in Civil Miscellaneous Application No.32 of 1989 has been set aside and the matter has been remanded for reconsideration. She further submits that evidence, which has been appreciated by the two courts, especially by the appellate court, shows that it had never been the case of defendant No.1 or his legal heirs about number of family members being high and about two members being

residing in suit premises. This is entirely a new plea being raised at the time of hearing in the civil revision application. She further submits that the evidence categorically shows suit premises were locked and as such, that gives rise to one more ground for eviction about nonuser. Twice, commissioner had been to the suit premises, however, found the suit premises being locked and ultimately evidence of commission had been taken in the alternate accommodation secured by the tenants.

12. The courts have considered that damages to the suit property could not be established by the plaintiffs as there was no corroborative material produced lending credence to the contention. The appellate court, however, has refused to reverse the decree of eviction passed against defendant No.1 for the reason that the plaintiff was not owner of the suit property. It has been considered that relationship between the parties – plaintiff and defendant No.1 as landlord and tenant, as emerging on record and to quite some extent has been an admitted position which is further corroborated by the conduct of defendant No.1, whereunder he had moved for fixation of standard rent pursuant to provisions of the Maharashtra Rent Control Act. The courts below have also considered that the evidence substantially bears out concerned defendants have

come in occupation of alternate suitable accommodation. A new plea in revisional jurisdiction about number of members, would not be amenable for consideration, in the facts and circumstances of the case.

13. Finding of fact recorded by the trial court and confirmed by the appellate court, having regard to aforesaid, do not appear to be such as would give indication of that appreciation has been perverse or is not in accordance with evidence. In the circumstances, it appears that the present is not such a case wherein discretionary powers of this court, under revision are required to be invoked and exercised. Civil Revision Application, as such, stands dismissed.

14. In view of dismissal of the civil revision application, amount of Rs.35,000/- deposited by the applicants in this court pursuant to order dated 15th December, 2015 be remitted to the executing court for further treatment and appropriation according to said order.

[SUNIL P. DESHMUKH, J.]