

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.218 OF 2015

Smt. Laxmibai Baburao Tirgul

(Since Deceased) & Others

...Applicants

Versus

Shri Shakambhari Sanstha, Baramati

and Others

...Respondents

Mr.Prabhanjan Gujar,for the Applicants.

Mr. Abhijit P. Kulkarni,for the Respondents.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JUNE 14, 2017.

P. C.:

Heard both sides. **Admit.** By consent of both the parties, taken up for hearing forthwith.

2 The Applicants-original Tenants have challenged the judgment and order passed by Ld. Civil Judge, Junior Division, Baramati decreeing the suit instituted by landlord Trust and the dismissal of the Appeal by the district Court at Baramati preferred by Applicants original Tenants.

3 After hearing both the parties, this Court (Coram : Shri. N. M. Jamdar J.) by order dated 07.12.2016 had called for a finding on the issue of comparative hardship in view of the requirement of section 16 (2) of the Act of 1999. Accordingly, the Ld. Civil Judge, Junior Division, Baramati has recorded a finding on the issue of comparative hardship vide its decision dated 28.04.2017. The certified copy of said decision dated 28.04.2017 has been taken on record of the above Civil Revision Application on 07.06.2017 and marked as “X” for identification. Thereafter, this Revision Application was adjourned to 12.06.2017 to enable the Respondents herein to decide what further course of action they would like to take.

4 Heard both the sides. Now in view of the findings recorded by Trial Court on the issue of comparative hardship in favour of Applicants/Tenants, the impugned judgment and decree passed by Trial Court and confirmed by Appellate Court cannot be sustained. The Trial Court therefore will have to pass a fresh order and draw the decree in accordance with the finding recorded on issue of comparative hardship by its decision dated 28.04.2017. The original Regular Civil Suit No. 97 of 2000 will have to be

restored to the file of Ld. Civil Judge, Junior Division, Baramati for the purpose of passing fresh order and decree strictly in accordance with the findings recorded in the original judgment and the findings recorded on the issue of comparative hardship. In short, the Trial Court will not add or modify the finding recorded in the earlier judgment of R.C. No. 97 of 2000 nor the finding recorded on 28.04.2017, except the operative part of order.

5 After passing of the final modified order and decree, both the parties would be at liberty to take out further legal proceedings as may be available to them in law. It is expressly made clear that this Court has not adjudicated the contentions of both parties on the merits of case and the same are kept open to be adjudicated before the appropriate forum by way of Appeal if preferred by the aggrieved party.

6 Hence I pass the following order.

a) The judgment and order dated 17.08.2011 passed by Ld. Civil Judge, Junior Division, Baramati in R.C. No. 97 of 2000 and the judgment and order dated 08.01.2015 passed by the District Court at Baramati in Civil Appeal No. 133 of 2011 is set aside.

b) The Regular Civil Suit No. 97 of 2000 is restored to the file of

Ld. Civil Judge, Junior Division, Baramati for the purpose of passing fresh order and decree strictly in accordance with the findings recorded in the original judgment dated 17.08.2011 and the findings dated 28.04.2017 recorded on the issue of comparative hardship.

- c) After passing of the final modified order and decree, both the parties would be at liberty to take out further legal proceedings as may be available to them in law. All contentions of both the parties are expressly kept open to be adjudicated before the appropriate forum by way of Appeal if preferred by the aggrieved party.
- d) Civil Revision Application is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)