

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

CIVIL REVISION APPLICATION NO.336 OF 2016

**Smt. Jayashree Vijaysingh Khalate
(Since deceased through her LRs)**

Nitin Vijaysingh Khalate and others

..Applicants

Versus

**Husenibhai Abdul Kadar Kayamkhani
(Since deceased through his LRs)**

**Smt. Shakera Aabidbhai Bavangaonvala (Bhori)
and others**

..Respondents

**Mr. Rajesh Kachare a/w Mr. Amit Potnis i/by Ms. Tamhane & Co., for
the Applicants.**

Mr. S. Shamim i/by Shamim & Co., for the Respondent No.1(A).

CORAM : R. M. SAVANT, J.

DATE : 29th MARCH, 2017

PC.

1 The judgment and order dated 22.01.2016 passed by the Learned District Judge-2, Baramati, by which, the suit in question came to be decreed is taken exception to by way of the above Civil Revision Application.

2 The Civil Revision Applicants are the heirs of the original tenant one Smt. Jayashree Vijaysingh Khalate. The Respondents herein are the original Plaintiffs. The premises are situated at Baramati, District Pune. The suit was founded on the ground of arrears of rent, annoyance and nuisance and bonafide requirement. The Trial Court on the basis of

the pleadings, framed the relevant issues amongst which was the issue of whether the Plaintiffs prove their bonafide requirement, whether the defendant/tenant is in arrears of rent and whether there is annoyance and nuisance. Except the ground of arrears of rent, the Trial Court negated the two other grounds i.e. bonafide requirement and nuisance and annoyance. In so far as the arrears of rent is concerned, the Trial Court returned a finding that the Defendant/tenant was in arrears of rent however instead of passing a decree on the said ground, the Trial Court directed payment of arrears of rent in terms of the directions as contained in the operative part of its judgment and order dated 12.02.1986. Since the Plaintiff had by then expired, his heirs filed an Appeal being Civil Appeal No.46 of 2010 in the District Court at Baramati. As indicated above, the Appeal came to be allowed. Resultantly, the decree on the ground of both arrears of rent as well as bonafide requirement came to be passed. In so far as arrears of rent is concerned, the Lower Appellate Court held that though the Trial Court had come to a conclusion that the Defendant/tenant was in default of payment of rent, the Trial Court had erred in not passing a decree on the said ground. In so far as bonafide requirement is concerned, since the Defendant/tenant had expired by the time the Appeal came up for hearing, the Lower Appellate Court was of the view that the death of the tenant was a relevant circumstance in the

context of the ground of bonafide requirement. The Lower Appellate Court also adverted to the fact that the heirs of the original tenant are residing in Pune and not in Baramati wherein the suit premises are situated. The Lower Appellate Court therefore came to a conclusion that a case for decree on the ground of bonafide requirement was made out. The Lower Appellate Court also considered the aspect of comparative hardship and since the heirs of the original Defendant/tenant were residing in Pune, the Lower Appellate Court was of the view that greater hardship would be caused to the heir of the original Plaintiff who was his son-in-law if the decree of possession was not passed than to the heirs of the tenants if a decree of possession were to be passed.

3 The Learned Counsel appearing on behalf of the Applicants i.e. the heirs of the original tenant Mr. Rajesh Kachare would contend that the son-in-law of the original Plaintiff at whose behest the ground of bonafide requirement has been invoked has in his possession as many as six rooms in Baramati and therefore it cannot be said that he is in need of accommodation.

4 It is well settled that in so far as the ground of bonafide requirement is concerned, the landlord is the best judge of his requirement and how he proposes to use the suit premises and it is not

(34) - CRA - 336 - 16. doc.

for the tenant to dictate to the landlord as to how he should utilize the premises which are already in his possession. As indicated above, the heirs of the original tenant are not residing in Baramati but they are residents of Pune, whereas the tenanted premises are situated at Baramati. Hence the said fact in a manner superimposes itself on the proceedings. In that view of the matter the finding of fact recorded by the Lower Appellate Court on the basis of the material on record on the basis of which it has passed the decree, does not merit any interference at the hands of this Court in its revisionary jurisdiction. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]