

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5368 OF 1995

Sudamdeo Sonu Nikam,
Age 69 years, Occ. Retired
servant, R/o. Patankar's Wada,
Behind Tadi Shop,
Near Mamaji Talkies,
Satara File, Bhusawal
District Jalgaon

...Petitioner

versus

Anantrao Raoji Shinde,
(since deceased by his L.Rs.)

1A) Smt. Vijaylaxmi Anantrao Shinde
Age 62 years, Occ. Household

1B) Prataprao Anantrao Shinde,
Age 47 years, Occ. Stamp
Vendor and Partition writer
in Mamlatdar's Office,
Bhusawal.

1C) Vijayshinha Anantrao Shinde
Age 42 years, Occ. Spare part
and scooter repairer,
Nos. 1A to 1C resident of
Methaji Plots, Behind Vasant
Talkies, Before Dr. Bholane's
Dispensary, Bhusawal,
Tq. Bhusawal, District Jalgaon

...Respondents

.....
Mr. V.T. Choudhari, advocate for the petitioner
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CORAM : V. K. JADHAV, J.
DATED : 11th JANUARY, 2018

ORAL JUDGMENT:-

1. The petitioner-plaintiff has instituted a suit being Regular Civil

Suit No. 168 of 1985 under the provisions of Bombay Rent Act for possession of the suit premises on the ground of default in payment of rent as well as on the ground of personal *bonafide* requirements as provided under Section 13(1) (g) of the Bombay Rent Act. According to the petitioner-plaintiff, the defendant is tenant in the suit premises, paying rent Rs.105/- p.m.. The defendant has paid rent up to the end of January, 1981. It is the contention of the petitioner-plaintiff that he is residing in another house and present accommodation came to the share of his brother Dattatraya in partition. After partition, since the said property was allotted to the share of brother of the plaintiff, the plaintiff is residing in the house as a tenant. Thereafter, dispute arose between the plaintiff and his brother Dattatraya and said brother Dattatraya had instituted a suit for possession in the year 1975. In the year 1976, the respondent defendant was in need of house accommodation and accordingly demanded the suit premises for residence on rent. It is contended that at that time plaintiff gave idea to the respondent-defendant that his brother has already instituted a suit to vacate the present premises and therefore, he would require the suit premises in case his brother succeeds in the pending litigation. The suit instituted by said brother Dattatraya came to be decided against the petitioner-plaintiff and though the petitioner-plaintiff has preferred appeal against the said judgment and decree insisting the defendant to

vacate the premises, even said pending appeal also came to be decided against the petitioner-plaintiff. However, the defendant has refused to vacate the suit premises. According to the petitioner-plaintiff, he is having reasonable need and having *bonafide* requirements of the suit premises for his residence purpose. He has no other accommodation available to reside except the suit premises. The petitioner-plaintiff is retired in the month of January, 1983. He is having four daughters and one son. The defendant is doing the business of stamp vendor and petition writer. Accordingly, the petitioner-plaintiff has issued notice to the defendant of his requirement of suit premises for his bonafide need and instituted the suit.

2. The defendant has strongly resisted the claim by filing written statement below Exh.12. He has admitted monthly tenancy of the suit premises. The defendant has paid the monthly rent till December 1985 to the petitioner-plaintiff from time to time. The defendant never agreed to vacate the suit premises and the petitioner-plaintiff has not informed him the pending litigation, if any, with his brother. It has also been contended that the petitioner-plaintiff is not in bonafide need of the suit premises. It has been specifically contended that if the suit premises is vacated by him he has to come on road. There are 8 family members of the defendant. It has been specifically

pleaded that the petitioner-plaintiff is desiring to sell out the suit premises as he will get the good market price and the petitioner-plaintiff is also having suitable alternate accommodation. It has also been contended by the defendant that the petitioner-plaintiff is not in bonafide requirement but has filed the suit to get excessive rent and defendant would suffer greater hardship if the suit is decreed.

3. On the basis of rival pleadings of the parties to the suit, the trial court has framed as many as six issues. The parties led oral and documentary evidence in support of rival contentions. The trial court has dismissed the suit after passing the order fixing the standard rent of the suit premises.

4. Being aggrieved by the said, the petitioner-plaintiff preferred Regular Civil Appeal No. 29 of 1987 before the District court, Jalgaon and by judgment and order dated 3.12.1994, the 4th Additional District Judge, Jalgaon dismissed the appeal. The respondent-tenant had also preferred Civil Revision Application No. 5 of 1987 as against the standard rent fixed by the trial court. Learned Additional District Judge has also dismissed the civil revision application No. 5 of 1987.

5. So far as the issue pertains to bonafide need of suit premises by the petitioner-plaintiff is concerned for seeking decree of eviction

under the provisions of 13 (1) (g) of the Bombay Rent Act, the learned Judge of the trial court while answering issue No.4 has observed that though the brother of the petitioner-plaintiff has instituted R.C.S. No. 525 of 1975 against the petitioner-plaintiff, but on the very next day of institution of suit, the petitioner-plaintiff let out the suit premises to the respondent-defendant. As such, from the facts of the case, it is evident that the petitioner-plaintiff had no bonafide and reasonable need of the suit premises. Further, from 30.12.1975 till 21.8.1981, the petitioner-plaintiff had issued receipts showing that he received rent from the defendant and till that he has never issued any notice to the defendant to vacate the premises owing to his bonafide need of the suit premises. The trial court has also observed that it has come in the evidence of the petitioner-plaintiff that he sold out another property on 10.5.1985 when he was owner of two residential house properties. It thus appears that the trial court has discussed oral and documentary evidence at great length and recorded a finding to issue No.4 in negative holding thereby that the petitioner-plaintiff has failed to prove that he is in bonafide need of the suit house for his residence. The learned Judge of the trial court has also recorded a finding in negative to issue No.5 with specific observations that defendant will suffer great hardship if the suit is decreed.

6. On perusal of judgment and order passed by the learned Additional District Judge, Jalgaon, it appears that the learned Additional District Judge has dealt with the submissions that since inception the plaintiff was in need of suit premises and it was for this reason he instituted the suit before the trial court in the year 1985. After scrutinizing the evidence minutely, the lower appellate court has concurred with the finding of trial court that it was the desire of the plaintiff to occupy the suit premises but there was no need right from 1976 to 1985. The lower appellate court has also recoded finding in negative and dismissed the Regular Civil Appeal.

7. On perusal of the judgment and order passed by the courts below, I do not find any substance in this writ petition. Both the courts below recorded a concurrent finding of facts. There is no substance in the writ petition.

8. In view of above, writ petition is dismissed. Rule discharged.

9. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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