

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.466 OF 2016

Sunanda Vishwanath Swanne ... Applicant
Vs.
Meenabai Prabhakar Ujlambe and others ... Respondents

Mr. Samir Kumbhakoni for Applicant.
Mr. Surel Shah for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 16, 2018

P.C. :

Heard Mr. Kumbhakoni, learned Counsel for the applicant and Mr. Shah, learned Counsel for the respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged - (i) the judgment and decree dated 23.08.2013 passed by the learned 9th Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.965 of 2002, (ii) the judgment and decree dated 04.03.2016 passed by the learned District Judge-5, Solapur in Regular Civil Appeal No.361 of 2013 as also (iii) the findings recorded by the learned District Judge in order dated 18.04.2018 by which the learned District Judge held that greater hardship will be caused to the plaintiffs in the event of refusal to pass eviction decree.

3. In support of this Application, Mr. Kumbhakoni submitted that the learned trial Judge decreed the Suit only under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The learned trial Judge also held that greater hardship will be caused to the plaintiffs by refusing to pass the eviction decree. Aggrieved by that decision, defendant preferred appeal. By order dated 04.03.2016, the learned

District Judge dismissed the appeal. He invited my attention to the order dated 28.03.2018 passed by this Court. By that order, the learned District Judge was directed to frame point on the question of comparative hardship and decide the said point on the basis of the evidence on record and after hearing the parties, transmit the findings to this Court. In pursuance thereof, the learned District Judge has transmitted findings on 18.04.2018.

4. Mr. Kumbhakoni invited my attention to paragraph 1 of the plaint. In paragraph 1, plaintiffs asserted that Municipal House No.264 situate in C.T.S.No.2420/3 admeasuring 20.3 sq.mtrs. comprises two storied building. In that building, possession of shop admeasuring 5' x 20' ft. on the ground floor, 5' x 20' on the first floor and 5' x 20' ft. on the second floor is sought. He also invited my attention to paragraph 8A of the written statement. In paragraph 8A, defendant asserted that partition was effected on 20.11.1987 between plaintiff's husband Prabhakar and his brother Nagappa. Eastern 10.45 sq.mtrs. was allotted to the share of Nagappa and western 10.45 sq.mtrs. was allotted to the share of Prabhakar. He submitted that though legal representatives of Nagappa were impleaded as plaintiffs No.2 to 5 subsequently in the Suit, their requirement is not pleaded in the Suit. That apart, nobody was examined to establish the requirement of the plaintiffs No.2 to 5. He submitted that the learned District Judge however observed in paragraph 19 that possession of the area admeasuring 5' x 20' ft. situate on the ground floor is sought. He submitted that the Courts below were, therefore, not justified in decreeing the Suit in its entirety. That apart, the Courts below also did not consider whether passing of partial eviction decree will satisfy the requirement of the plaintiffs. He, therefore, submitted that Application requires consideration.

5. On the other hand, Mr. Shah supported the impugned orders. He

submitted that after considering the evidence on record, the learned trial Judge held that plaintiffs have established that their requirement is both, reasonable as also bonafide and that greater hardship will be caused to them in the event of refusal to pass eviction decree. The learned District Judge also decreed the Suit under Section 16(1)(g) of the Act. However, as no finding was recorded on the question of comparative hardship, the matter was remitted to the learned District Judge for considering this issue. The learned District Judge has transmitted findings dated 18.04.2018 and held that the defendant did not lead any evidence as to what search she had taken to find out alternate accommodation. She also did not lead any evidence to show existence of several properties belonging to Meenabai - plaintiff. He, therefore, submitted that no case is made out for interfering with the impugned orders.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of paragraph 1 of the plaint shows that plaintiffs have sought possession of shop situate on the ground floor admeasuring 5' x 20' ft. and premises of equal size on the first and second floor. In paragraph 2 of the written statement, defendant admitted that the description given in paragraph 1 of the plaint is correct. Thus, it is not now open to the defendant to contend that the description of the suit premises given in the plaint is not proper. In so far as the contention of Mr. Kumbhakoni that though legal representatives of Nagappa are impleaded as plaintiffs No.2 to 5, nobody was examined to substantiate their requirements is concerned, equally, I do not find any merit in this submission. The Courts below have concurrently held that plaintiffs have established their requirements. The only limited issue that was transmitted to the learned District Judge was for considering the question of comparative hardship .In pursuance of order dated

20.03.2018, the learned District Judge has transmitted the findings on 18.04.2018. In paragraph 12, the learned District Judge referred to evidence of P.W.1 Meenabai. P.W.1 Meenabai deposed that her son has completed the course of photography and when he wishes to launch his own business, he has no space. Due to non availability of space, her son has to approach the customers door-to-door. P.W.1 Meenabai further deposed that she wishes to launch her home products sale business. In paragraph 13, the learned District Judge noted that the statements made by P.W.1 Meenabai in her examination in chief are not dislodged during the course of cross-examination. In fact, there was no cross-examination on the point of hardship. The learned District Judge also noted that the evidence adduced by the defendant is in the form of oath against oath. In paragraph 14, the learned District Judge noted that if the dimensions of share received by Meenabai in partition are considered, her need appears genuine and hardship being faced by her ultimately gets surfaced. In paragraph 15, the learned District Judge noted that defendant did not lead any evidence to show existence of any properties belonging to Meenabai. That apart, defendant did not lead any evidence to show what search she had taken for finding out alternate accommodation.

7. In the light of the aforesaid discussion, I do not find that the learned District Judge committed any error in answering issue of comparative hardship in favour of the plaintiffs. It may be that plaintiffs No.2 to 5 did not lead evidence to substantiate their requirement. Nonetheless, the Courts below have accepted evidence of P.W.1 Meenabai and have held that she has established that the requirement is reasonable and bonafide. After appreciating the evidence on record, the Courts below have decreed the Suit under Section 16(1)(g) of the Act as also held that greater hardship will be caused to the plaintiff if eviction

decree is not passed. In so far as contention of Mr. Kumbhakoni about passing of partial eviction decree, it is not in dispute that no such case was pleaded. No issue was framed. No evidence was led. The contention was also not advanced in the Courts below. The defendant cannot be permitted to agitate this issue for the first time that too without any foundation. In view thereof, no case is made out for interfering with the impugned orders. Defendant was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendant was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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Date: 2018.07.18 04:05:56 -0400