

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.87 OF 2018

Tarabai Krushnaji Shedge & Ors.		Applicants
Vs.		
Mangala Prabhakar Bhagat & Anr.		Respondents

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Mr. Ashok B. Tajane, for Applicants.

Mr. Shashank Mangale i/b Sourabh Butala, for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 12TH MARCH, 2018.

P.C.

Heard Mr. Tajane, learned Counsel for the applicants and Mr. Mangale, learned Counsel for the respondents at length.

2. By this Petition under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicants have challenged the judgment and decree dated 29th July, 2011 passed by the learned 6th Additional Judge Small Causes Court, Pune in Civil Suit No.376 of 2007 as also judgment and decree dated 24th April, 2017 passed by the learned District Judge-15 in Appeal No. 667 of 2011. By these orders, the Courts below decreed the suit instituted by the respondents (hereinafter referred to as 'plaintiffs') for recovery of possession of shop facing towards eastern side of ground floor and

and one rear room situate at CTS No. 1046, Raviwar Peth, Pune 411 002 (for short 'suit premises') under section 15, 16 (1) (g) and 16 (1) (n) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. In view of section 7 of the C.P.C, Section 115 of C.P.C is not applicable to the Courts constituted under Provincial Small Causes Courts Act, 1887. Hence, leave to convert this Civil Revision Application into Writ Petition is granted. Amendment shall be carried out forthwith.

4. In support of this Petition, Mr. Tajane submitted that the Courts below committed serious error in relying on the testimony of Prabhakar Bhagat, husband and power of attorney holder of plaintiff No.1 Mangala Bhagat. He submitted that this suit is instituted under Section 16(1) (g) of the Act, there are no pleadings as regards requirement of suit premises for commercial purpose. The plaintiffs have pleaded that husband of plaintiff No.2 Vijaya Sanap is not well and the suit premises are required for his residence. However, in the plaint itself, it is asserted that husband of plaintiff No.2 Vijaya is no more.

5. Mr. Tajane further submitted that the witness examined on behalf of the plaintiffs also admitted that they are having sufficient premises. In so far as plaintiff No.2 Vijaya is concerned, she has settled at Nasik and her daughters are also residing at Nashik. He has taken me through the cross-examination of the plaintiffs' witness to substantiate his submission that there are several premises available with the plaintiffs. That will meet requirement of the plaintiffs. In particular, it has come in the cross-examination that plaintiffs have

building at 1046, Ravivar Peth, Pune. Even in the suit premises, one room opposite to the room of Manikchand is in possession of the plaintiffs. The plaintiffs have also obtained possession of one room from one Shri Dal and had inducted the licensee. He submitted that all these acts clearly establish that the requirement pleaded is neither reasonable nor bona fide.

6. Mr. Tajane submitted that the plaintiffs have instituted Civil Suit No.378 of 2007 against another tenant Eknath Krishnaji Jagtale. One of the grounds invoked in that suit was reasonable and bona fide requirement. The trial Court dismissed the suit with costs. Civil Appeal No.56 of 2009 preferred by the plaintiffs was dismissed by the learned District Judge on 23rd July, 2015. The plaintiffs have not carried the matter further. Thus, the Courts below in that case have held that the plaintiffs did not establish that their requirement is reasonable and bona fide. He submitted that the plaintiffs also instituted the proceedings against Asha Arun Warode. He submitted that the said tenant had instituted Writ Petition No.1894 of 2015 and the same is admitted by issuing rule on 8th August, 2017 and interim relief is granted.

7. As far as the ground of non user without sufficient cause under Section 16 (1) (n) is concerned, he submitted that there is no specific pleading as required under Section 16 (1) (n) namely that the suit premises have not been used without reasonable cause for the purpose for which they were let out for a continuous period of six months immediately preceding the date of the suit. He submitted that the plaintiffs have not adduced positive evidence to establish non user for more than six months preceding the date of institution of the suit.

As against this, the defendants have examined Laxminarayan Tapadia at Exhibit 103 to substantiate that defendants are using the suit premises continuously. He, therefore, submitted that Petition requires consideration.

8. On the other hand, Mr. Mangale supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently held that the plaintiffs have established grounds under Sections 16(1) (g) and 16 (1) (n) of the Act. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

9. I have considered the rival submissions of the learned Counsel for the parties. I have also perused the material on record. A perusal of the evidence on record, more particularly cross-examination of plaintiff's witness Prabhakar does not indicate availability of other premises. The suggestions given by the defendants have been denied by that witness. The defendants, however, have not produced any positive evidence to substantiate their contention that several premises are available with the plaintiffs. Mr. Mangle submitted that in fact, in the written statement defendants did not plead as also did not adduce any concrete evidence as regards availability of other premises. Thus, after appreciating the evidence on record, the Courts below concurrently held that the plaintiffs have established that they require the suit premises reasonably and bona fide and greater hardship will be caused to them in case eviction decree is refused.

10. In so far as ground u/s 16 (1) (n) is concerned, the defendants have adduced evidence of Mr. Tapadia at Exhibit 103. The

Courts below have dealt with that evidence and found that the documents produced by him are of the year 2009. Relevant period is 16th January, 2007 to 16th July, 2007. The learned trial Judge has considered this aspect in paragraphs 8 and 9 of the order and accepted the case of the plaintiff. The Appellate Court has considered this aspect in paragraphs 19 to 27. After considering the material on record, the Courts below have concurrently found that the plaintiffs have established the ground of non user u/s 16 (1) (n) of the Act and the defendants have not established any sufficient cause that prevented them from using the suit premises. Thus, the Courts below after appreciating the evidence on record, have concurrently decreed the suit u/s 16 (1) (g) and 16 (1) (n) of the Act.

11. In so far as the ground u/s 15 is concerned, the trial Court did not decree the suit on that ground. The Appellate Court has considered this aspect in paragraphs 28 to 39 and came to the conclusion that the defendants are defaulters and that they have not complied with section 15(3) of the Act. Mr. Tajane submitted that one of the co-owner had filed application dated 4th April, 2015 during the course of appeal for impleading her as party in the appeal. He submitted that one of the co-owners has opposed passing of eviction decree. Mr. Mangale submitted that cause title of the judgment of of the Appellate Court does not indicate that the application made by the third party was allowed. In any case, remedy of co-owner is to institute the suit for partition. The suit for partition is pending. That apart, Section 35 of the Act lays that nothing contained in sections 33 and 34 shall be deemed to bar a party to a suit proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a Competent Court to establish, his title

to such premises. The eviction suit cannot be converted into inter se title suit. I, therefore, do not find any merit in the submission of Mr. Tajane.

12. After considering the material on record, I do not find that the Courts below committed any error in decreeing the suit. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the evidence on record. The defendants are not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of the C.P.C. Hence, Petition fails and the same is dismissed.

13. At this stage, Mr. Tajane orally prays for continuation of interim arrangement recorded by this Court in the order dated 23rd January 2018 for a period of six weeks from today. He assures that defendants and all the adult family members residing with them will file usual undertaking in this Court within two weeks from today, after giving advance copy to the other side incorporating therein that;

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) within two weeks from today, applicants will deposit the entire arrears, if any, in the Small Causes Court

Pune in the account of Civil Suit No.376 of 2007 under due intimation to the respondents.

- (e) in case they are unable to obtain suitable orders from the higher Court within six weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

15. Subject to the petitioners' filing the undertaking in the aforesaid terms within two weeks from today, interim arrangement shall remain in force for a period of six weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today, interim arrangement shall stand vacated. In case, defendants are unable to obtain suitable orders from higher Court within a period of six weeks and do not hand over possession of the suit premises to the plaintiffs, the plaintiffs will be at liberty to proceed with the matter in accordance with law. Order accordingly.

16. List the Petition for reporting compliance on 26th March, 2018.

[R.G. KETKAR, J.]