

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.41 OF 2018

Najuk Machindra Dolare (dead)	]	
Through her legal heirs & L.R.	]	
Gorakh Machindra Dolare and others.	]	Applicants
Vs.		
Raghunath Maruti Bhaval (dead)	]	
Through her legal Heirs and L.Rs.	]	
Nilabai Raghunath Bhaval and others.	]	Respondents

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Mr. Milind R. Deshpande, for Applicants.

Mr. Nilesh M. Wable, for Respondents No.1A and 1C.

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CORAM : R.G. KETKAR, J.**DATE : 3rd SEPTEMBER, 2018.****P.C.**

Heard Mr. Deshpande, learned Counsel for the applicants and Mr. Wable, learned Counsel for respondents No.1A and 1C at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicants have challenged the judgment and decree dated 30th September, 2016 passed by the learned District Judge-5, Solapur in Regular Civil Appeal No.439 of 2010. By that order, the learned District Judge allowed the appeal preferred by the respondents and dismissed Cross Objection preferred by the applicants herein. The learned District Judge decreed the suit instituted by the respondents and directed the applicants herein to hand over vacant and peaceful possession of residential accommodation situate at T.P. No.2, Final Plot No.41, sub Plot

No.36 admeasuring about 27.9 square meters, New Budhwar Peth, Solapur (for short 'suit premises') within a period of two months from the date of the order, amongst other directions.

3. In support of this application, Mr. Deshpande submitted that after considering the evidence on record, the learned trial Judge dismissed the suit. He invited by attention to the findings recorded by the learned trial judge in paragraphs 9 and 10 while answering Issue No.3 dealing with ground of bona fide requirement. He submitted that in the cross-examination, plaintiff's witness Ragunath admitted that rented premises in his possession is sufficient for their occupation. The learned trial Judge observed that as the plaintiff's witness admitted that the present rented premises in his possession is sufficient for their accommodation, the plaintiff did not establish his bona fide requirement. As against this, the learned District Judge ignored vital admission given by the plaintiff's witness and decreed the suit. He, therefore, submitted that application requires consideration.

4. On the other hand, Mr. Wable supported the impugned order. He submitted that the learned trial Judge failed to appreciate that the plaintiff was occupying quarter allotted by the State Government. After retirement, he was required to vacate the quarter allotted by the Government and was residing in a rented premises in New Budhwar Peth. The learned District Judge noted that the plaintiff is residing in rented premises and that he has no other accommodation. The learned District Judge also noted that the defendant did not cross-examine Laxmibai Khandare and her evidence remained unchallenged.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It has come

on record that the plaintiff was working as 'Naik' in the office of the Collector. After retirement, he had to vacate the quarter allotted to him. He was residing in a rented premises. The learned District Judge noted that there are 10 to 12 members in the family of the plaintiff. Plaintiff has three sons and one daughter. Two sons are married. One son and daughter are of marriageable age. Premises in possession of the plaintiff is insufficient to accommodate his family. In paragraph 26, after considering the evidence on record, the learned District Judge held that the plaintiff has established that his requirement is reasonable and bona fide. The learned trial Judge failed to appreciate that after retirement, the plaintiff is residing in a rented premises. The plaintiff cannot be compelled to stay in the rented premises.

6. Mr. Deshpande submitted that the learned District Judge did not discuss issue of comparative hardship. I do not find any merit in this submission. The learned District Judge has dealt with issue of comparative hardship in paragraphs 27 to 29. Thus, after appreciating the evidence on record, the learned District Judge held that requirement of the plaintiff is both reasonable and bona fide and greater hardship will be caused to the plaintiff if the eviction decree is not passed.

7. In view thereof, I do not find that the learned District Judge committed any error in passing the impugned order. The applicants are not in a position to demonstrate that the findings recorded by the learned District Judge are perverse being based on no evidence or that on the basis of the material on record, no reasonable or prudent person would have come to the conclusion arrived at by the learned District Judge. The applicants are not in a position to show that the findings recorded by the learned District Judge are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising

the powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

8. Before parting, it is necessary to place on record that time was taken on behalf of the applicants for bringing legal representatives of applicant No.1B Shashikant Machindra Dolare on record by filing necessary application. However, no application was taken out for that purpose.

[R.G. KETKAR, J.]