

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4977 OF 2019

Arvind Uttamchand Doshi and another.	]	Petitioners
Vs.		
Jitendra Hirchand Wakhariya	]	Respondent

.....

Mr. Kunal Bhanage, learned Counsel for the Petitioners.
Mr. Anand Lawate i/b Sandeep Waghmare, learned Counsel for the Respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 8TH APRIL, 2019.

P.C.

Heard Mr. Bhanage, learned Counsel for the petitioners and Mr. Lawate , learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants' have challenged the judgment and decree dated 7th October, 2014 passed by the learned 4th Additional Small Causes Judge, Pune in Civil Suit No.134 of 2012 as also the judgment and decree dated 17th January, 2017 passed by the learned District Judge-1, Pune in Civil Appeal No.647 of 2014. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff' under sections 16 (1) (e) (unlawful subletting by defendant No.1 to defendant No.2) and 16 (1) (g) (reasonable and bona fide requirement of the plaintiff) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. In support of this Petition, Mr. Bhanage strenuously contended that the Courts below committed serious error in decreeing suit under section 16 (1) (e) of the Act. The Courts below held that defendant No.1 was tenant. Defendant No.2, who is real brother of defendant No.1 was unlawfully inducted in the suit premises as sub tenant. The Courts below, however, failed to appreciate that predecessor in title had inducted defendants No.1 and 2 in the suit premises prior to 1974. The predecessor-in-title of the plaintiff had created joint tenancy in favour of defendants No.1 and 2. The Courts below, therefore, were not justified in holding that defendant No.2 is unlawful sub tenant of the suit premises.

4. In so far ground under section 16 (1) (g) of the Act is concerned, he submitted that the Courts below failed to appreciate that the plaintiff has several premises which are available to him. There are seven rooms on the ground floor and eight rooms on the first floor in the building where the suit premises is situate. Similarly, he is also having five rooms admeasuring 2000 square feet carpet area in Guruwar Peth. Thus, the plaintiff has several premises and, therefore, need pleaded by the plaintiff is neither bona fide nor reasonable. In fact, need of the plaintiff is mala fide. The Courts below, therefore, not justified in decreeing the suit under section 16 (1) (g) of the Act.

5. Mr. Bhanage further submitted that the plaintiff came with the case that defendant No.1 inducted defendant No.2 sometime in the year 1998. The suit instituted by the plaintiff in the year 2002 is hopelessly barred by limitation. For all these reasons, he submitted that the Petition requires consideration.

6. On the other hand, Mr. Lawate supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below

held that defendant No.2 was inducted by defendant No.1 sometime in the year 2001-2002. Defendant No.1 had purchased residential flat being Flat No.301 in Chandramohan Heritage, Sadashiv Peth, Pune in the year 2001-2002. After purchasing the flat in Sadashiv Peth, Pune, he shifted there and inducted defendant No.2. Defendant No.2, in fact was residing in House No.811-A in Shukrawar Peth, Pune. He submitted that the plaintiff had produced voters list for the period 1985-2002 which substantiates case of the plaintiff that defendant No.2 is residing in House No.811-A in Shukrawar Peth, Pune. He, therefore, submitted that the Courts below were fully justified in decreeing suit under section 16 (1) (e) of the Act.

7. In so far as decree passed under section 16 (1) (g) of the Act is concerned, the Courts below held that defendant No.1 has several premises in and around Pune. He has purchased a bungalow plot at Pashan in the name of his wife. He has purchased Offices at Erandwane, Pune. He submitted that the Courts below after considering the financial status as also considering comparative hardship have decreed the suit under section 16 (1) (g) of the Act. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the Courts below have decreed the suit under section 16 (1) (e) and 16 (1) (g) of the Act. In so far ground under section 16 (1) (e) is concerned, the learned trial Judge has considered this ground from paragraphs 23 to 45. In paragraph 30, the learned trial Judge noted that defendant No.1 admitted that he is not residing in the suit premises but his brother, defendant No.2 who is his family member is residing in the suit premises. Defendant No.1 admitted that he is having several immovable properties. He came with the case that

some of the properties were sold by him. He, however, did not produce any evidence on record. Defendants No.1 and 2 came with the case that they are joint tenants in the suit premises inducted by erstwhile owner Vaidya. Since 1972, they are occupying the suit premises as joint tenants.

9. In paragraph 32, the learned trial Judge referred to admission of defendant No.1. During his cross-examination, defendant No.1 admitted that the erstwhile owner Vaidya issued rent receipt in his name. He has no documentary evidence to show about joint tenancy. From his cross-examination, it revealed that defendant No.1 was not residing in the suit premises. He is residing in flat purchased by him in the year 1996. He also admitted that he did not inform the plaintiff about joint tenancy. After appreciating the evidence on record, the learned trial Judge held that defendants No.1 and 2 are not joint tenants. Defendant No.1 alone is the tenant. In paragraph 37, the learned trial Judge noted that defendant No.2 is not residing in the suit premises since 1972. Defendant No.2 was residing in House No.811-A, Shukrawar Peth, Pune as a tenant. Defendant No.1 inducted defendant No.2 in the year 1996 after shifting to his flat at Sadashiv Peth.

10. In paragraph 38, the learned trial Judge dealt with the admission of defendant No.2 in his evidence at Exhibit 67. Defendant No.2 admitted that he never asked the landlord to issue rent receipt jointly in the name of defendant No.1 and himself nor he has any documentary evidence to show that he is joint tenant in the suit premises along with defendant No.1. The learned trial Judge referred to certified copies of the Court cases at Exhibit 78 to 89 where residential address of defendant No.2 is shown as Katewada, Gadikhana, Shukrawar Peth, Pune. Summons of Special in C.S No.562 of 1981 was also served on defendant No.2 on that address. Defendant No.2 admitted that all the documents showed his address as of House No.811-A, Shukrawar

Peth, Pune. In paragraph 39, the learned trial Judge referred to the various documents produced by the plaintiff which show that defendant No.2 was residing at House No.811-A, Sukrawar Peth, Pune along with his wife since 1985. In paragraph 40, the learned trial Judge referred to electricity bill produced at Exhibit 56 in the name of defendant No.2 showing address of Shukrawar Peth, Pune. After considering the material on record, in paragraph 45, the learned trial Judge concluded that defendant No.1 had unlawfully sublet the suit premises to defendant No.2.

11. In so far as ground of reasonable and bona fide requirement is concerned, the learned trial Judge has considered this ground from paragraphs 46 to 52. In paragraph 48, the learned trial Judge referred to evidence of the plaintiff. The plaintiff deposed that he had undergone surgery to his left leg and, therefore, he is unable to climb staircase. He is suffering from blood pressure and is residing at S.No.73/76 Ravivar Peth in the flat of his son Deepak. He is residing on the second floor having no lift facility. In paragraph 49, the learned trial Judge dealt with contention of defendants No.1 and 2 that the plaintiff possesses immovable properties as well as leasehold property at 100, Guruwar Peth, Pune; plaintiff is in possession of 14 rooms in the building where the suit premises is situate.

12. In paragraph 51, the learned trial Judge noted that defendant No.1 admitted that he is having property at Chandramohan Heritage, Shidanand Co-operative Housing Society, office at Erandawana and House property at Mukund Nagar. Defendant No.1, therefore, cannot doubt bona fide requirement of the plaintiff. In paragraph 52, the learned trial Judge noted that defendants No.1 and 2 admitted that the plaintiff had undergone operation of left leg. The plaintiff is of old age. As the suit property is on the ground floor, adjacent to the premises in possession of the plaintiff, it will be convenient for

him to occupy and use the same. The learned trial Judge, therefore, held that the plaintiff has established that he requires the suit premises reasonably and bona fide.

13. In so far as District Court is concerned, the learned District Judge had considered ground under section 13 (1) (e) from paragraphs 12 to 15. The learned District Judge held that there were ample opportunities to defendant No.2 to establish the fact that he was/is joint tenant along with defendant No.1. He did not discharge that burden by adducing cogent and sufficient evidence. The learned District Judge referred to evidence of P.W.2 Suhas who was next door neighbour of defendant No.2 in House No.811-A, Shukrawar Peth, His evidence remained un-controverted. In paragraph 13, the learned District Judge held that defendant No.1 shifted to other flat in the year 1996 with his family and had handed over possession to defendant No.2. The learned District Judge affirmed the finding of the learned trial Judge in respect of ground under section 16 (1) (e) of the Act.

14. In so far as the ground of reasonable and bona fide requirement is concerned, the learned District Judge has considered this ground from paragraphs 16 and 17. The learned District Judge noted that the plaintiff is a senior citizen and due to operation of left leg and blood pressure, he cannot climb the staircase. He could not reside with his elder son Deepak whose flat is on the second floor in Ravivar Peth, Pune. Moreover, he could not pull on well with his elder brother and his wife. He was insisting the plaintiff and his younger brother Devendra to vacate the said flat, where they reside. The learned District Judge observed that evidence regarding his ailment and family problems was not challenged in the cross-examination. The learned District Judge, therefore, held that need pleaded by the plaintiff is reasonable and bona fide. The learned District Judge also noted the admission of the plaintiff

in the cross-examination that his elder son Deepak resides in a four room flat at Salisbury Park and is not in need of the suit property and observed that this is not of much importance. As the plaintiff is the owner of the suit premises, it is for him to decide where to reside. The flat where he at present resides is in Raviwar Peth, Pune and his younger son Devendra also resides there. His family also resides there. It is but natural for the plaintiff to decide where to reside.

15. The learned District Judge also noted that elder son of defendant No.2 is also C.A. Defendant No.2 can very well shift there. Comparative hardship of defendant No.2 who is unlawful sub tenant cannot be considered. Defendant No.1 has many properties in and around Pune. He is not going to suffer any hardship. Thus, the learned District Judge affirmed finding of the learned trial Judge on the ground of reasonable and bona fide requirement.

16. Mr. Bhanage submitted that the plaintiff is in possession of seven rooms on the ground floor and eight rooms on the first floor in the building where the suit premises is situate. He is also in possession of five rooms on the ground floor admeasuring 2000 square feet in Guruwar Peth. The learned trial Judge has considered this aspect in paragraph 49. The learned trial Judge thereafter held in paragraph 50 that admittedly defendant No.1 is not residing in the suit premises. Defendant No.1 is a statutory tenant and defendant No.2 is unauthorized sub tenant. The learned trial Judge also dealt with the fact that defendant No.1 is having several properties in or around Pune. Thus, the Courts below, after appreciating the evidence on record, have concurrently held that the plaintiff has proved that he requires the suit premises reasonably and bona fide.

17. After perusing the impugned orders as also material on record, I do not find that the Courts below committed any error in decreeing the suit. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders. It cannot be said that the findings recorded by the Courts below are contrary to the material on record. 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 on the basis of the material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. The defendants are not in a position to show that the findings 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 Article 227 of the Constitution of India. In the result, Writ Petition fails and the same is dismissed.

18. At this stage, Mr. Bhanage orally applies for stay of eviction decree for a period of 14 weeks from today He assures that within two weeks from today the petitioners and all the adult family members using the suit premises will file usual undertaking in this Court 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 interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within two weeks from today, they will deposit arrears of rent, if any, in this Court, under due intimation in writing to the learned Counsel for the respondent.

- [e] in case they are unable to obtain suitable orders from the higher Court within two weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondent/plaintiff.
- (f) the petitioners will not seek further extension of time.

19. In view thereof, notwithstanding dismissal of this Writ Petition, subject to the petitioners filing undertaking in the aforesaid terms within two weeks from today, eviction decree is stayed for a period of 14 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 and/or in case the petitioners commit breach of any of the conditions of the undertaking, the stay to the eviction decree will stand vacated without further reference of the Court. Order accordingly.

[R.G. KETKAR, J.]