

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4821 OF 2019
WITH
WRIT PETITION NO.4897 OF 2019

Anandrao Baburao Gawade	]	
(since deceased through legal heirs)	]	
Kondabai Anandrao Gawade & Ors.	]	Petitioners
Vs.		
Ghamandiram Vardichand Jain	]	Respondent

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Mr. A.V. Anturkar, learned Senior Advocate i/b Mr. Yatin Malvankar i/b Mr. Amol Gatne, Advocates for the Petitioners in both the Petitions.
Mr. K.P. Mali, Advocate for the Respondent in both the Petitions.

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CORAM : R.G. KETKAR, J.

DATE : 24TH JUNE, 2019.

P.C.

Heard Mr. Anturkar, learned Senior Counsel for the petitioners and Mr. Mali, learned Counsel for the respondent in both the Petitions, at length.

2. By these Petitions under Article 227 of the Constitution of India, the petitioners have challenged the judgment and decree dated 17th July, 2017 passed by the learned District Judge-15, Pune in Civil Appeal No.252 of 2009 and Civil Appeal No.305 of 2019.

3. Rule. Mr. Mali waives service. Having regard to the narrow controversy raised in these Petitions as also at the request and by consent of

learned Counsel for the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing. The relevant and material facts giving rise to filing of these petitions, briefly stated, are as under.

4. The petitioners instituted Civil Suit No.209 of 2008 for recovery of possession of Shop No.1 admeasuring 23x11 feet situate in Survey No.49/2, Plot No.49, Chandannagar, Village Kharadi within the Municipal Limits of Pune Corporation, *inter alia*, invoking grounds;

- [1] change of user as contemplated under section 16 (1) (a) and
- [2] plaintiff requires the suit premises reasonably and bona fide as contemplated under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

It is not necessary to deal with the rival contentions advanced before the Courts below. Suffice it to note that by order dated 8th April, 2009, the learned trial Judge decreed the suit partly. The learned trial Judge directed the defendant to hand over vacant and peaceful possession of the front portion of the suit premises admeasuring 3.00 x3.35 meters to the plaintiff within three months. Possession of rear portion of the suit premises admeasuring 3.07x2.88 meters was ordered to be retained by the defendant.

5. Aggrieved by this decision, the defendant preferred Civil Appeal No.252 of 2009 and the plaintiffs preferred Civil Appeal No.305 of 2009. By order dated 17th July, 2017, the learned District Judge allowed the Civil Appeal No.252 of 2009 preferred by the defendant and dismissed the Civil Appeal No.305 of 2009 filed by the plaintiffs. It is against these orders, the plaintiffs have instituted the above Writ Petitions.

6. In support of these Petitions, Mr. Anturkar has invited my attention to the findings recorded by the learned District Judge in paragraphs 26 and 27. He submitted that the District Court being last fact finding Court ought to have discussed the evidence adduced by the parties as also recorded reasons. He submitted that in so far as the case made out by the plaintiffs invoking ground under section 16 (1) (g) of the Act is concerned, the learned District Judge did not give any reason in coming to the conclusion that the plaintiffs have not established that their requirement is reasonable and bona fide. As the learned District Judge has not given any reasons, the impugned order may be set aside and the appeals preferred by the defendant and the plaintiffs may be restored for deciding them afresh.

7. On the other hand, Mr. Mali supported the impugned order. He invited my attention to paragraph 15 of the impugned order. He submitted that during pendency of the appeals, the defendant filed application Exhibit 68 under Order-XLI, Rule-27 of the Code of Civil Procedure, 1908 for adducing additional evidence. Along with that application, the defendant produced documents along with list-Exhibit 70. By order dated 8th December, 2014, the learned District Judge allowed the application and permitted the defendant to bring on record these documents. He submitted that in paragraph 15, the learned District Judge recorded that the defendant has produced sanctioned plan of Pune Municipal Corporation and completion certificate.

8. In paragraph 16, the learned District Judge observed that son of the original landlord Anandrao applied for sanction of plan of Survey No.49, Hissa No.1/2A/1 of Kharadi. On 30th July, 2013, completion certificate was issued by the Corporation. He submitted that construction carried out by the plaintiff in Survey No.49, Hissa No.1/2A/1 of Kharadi is adjacent to the suit premises. In view of the construction carried out by the plaintiffs, need of the

plaintiffs no longer survives. The learned District Judge was, therefore, justified in passing the impugned orders.

9. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Mr. Mali relied on paragraphs 15 and 16 of the impugned order which read thus;

“15. Thus, at the outset, it is necessary to consider the aspect of the additional evidence. Below Exh.68 in Appeal No.252/2009, the tenant sought permission to place on record certain documents. These documents are below list Exh.70. These documents include, a challan filed with Pune Municipal Corporation by the landlord. These documents also include a sanctioned plan of Pune Municipal Corporation and a completion certificate. The predecessor of this court vide order dated 08.12.2014 had permitted these documents on record. Hence, these documents below list Exh. 70, which are the verified copies from the office of Pune Municipal Corporation, are relevant.

16. As per these documents, it is clear that, son of the original landlord Anandrao, applied for sanction of a plan of S. No.49, Hissa No.1/2A/1 of Kharadi. The Pune Municipal Corporation not only sanctioned the plan, but had issued a commencement certificate in favour of the son of original landlord. Thereafter, on 30.07.2013 a completion certificate has been issued by the Pune Municipal Corporation”.

10. As against this, Mr. Anturkar relied on paragraphs 26, 27 and 28 of the impugned order. In paragraph 28, the learned District Judge observed that the subsequent event of son of the original landlord acquiring premises at Kharadi Chandannagar is sufficient to come to a conclusion that bona fide need is not in existence. Paragraphs 26 to 28 read thus;

“26. In backdrop of these aspects, if the plaint is considered, landlord pleaded that, he intends to start a milk business i.e a dairy in the suit premises. It is the plea of the landlord that, there is no sufficient available accommodation and hence, he requires the suit premises for bonafide use and

occupation. Accordingly, the evidence has been adduced on record. If the testimony of deceased Anandrao is considered, he had admitted that, there is no documentary evidence about change of user of the business in the suit premises by the tenant. He also admits that, there is no evidence about, the tenant acquiring 1000 sq. ft. premises. With regard to the bonafide need, deceased landlord Anandrao testified that, prior to 4 to 5 years of his deposition, he had felt need of the suit premises for the purpose of business of his son.

27. Thus, the afore-said two facts are sufficient to adjudicate these two appeals. The first is, son of the original landlord has acquired and developed the premises at Kharadi, Chandannagar. There is no amendment in the plaint, regarding the need of the suit premises, for dairy business. The second aspect is, the evidence of the original landlord on the point of bona fide need. If the cross-examination is considered, the bonafide need is not even established by the original landlord.

28. The subsequent event of son of the original landlord acquiring the premises at Kharadi Chandannagar, is sufficient to come to a conclusion that, the bona fide need is not in-existence. As there is no evidence about, tenant having a premises admeasuring 1000 sq. ft, if decree of eviction is passed, greater hardship will be caused to the tenant than to landlord. Thus, answer point No.1 in the negative and point No.2 in favour of the tenant”.

11. In my opinion, the judgment written by the learned District Judge with respect, is far from satisfactory. The learned District Judge should have considered the extent of construction made in Survey No.49, Hissa No.1/2A/1 of Kharadi. The learned District Judge ought to have considered whether construction carried out by the plaintiffs in this plot is for commercial purpose and the same will meet requirement of the plaintiffs. The first appellate Court is a fact finding Court. In the absence of any finding being recorded on these aspects, it is not possible to accept submission of Mr. Mali that need of the plaintiffs does not survive. As no findings are recorded by the learned District

Judge, it is necessary to set aside the impugned order and restore the appeals preferred by the plaintiffs and defendant to their original position. It is further necessary to direct the learned District Judge to give reasons dealing with the ground of bona fide requirement. As the appeals are of 2009, the learned District Judge is requested to dispose of the appeals within three months from production of the authenticated copy of this order. Hence, the following order:

- [1] The impugned order dated 17th July, 2017 passed in Civil Appeal No.252 of 2009 and Civil Appeal No.305 of 2009 is set aside.
- [2] Civil Appeal No.252 of 2009 and Civil Appeal No.305 of 2009 are restored to their original position along with interim orders pending the appeals.
- [3] The learned District Judge is requested to dispose of the appeals within three months from production of the authenticated copy of the order.
- [4] All contentions of the parties on merits are expressly kept open.
- [5] Rule is made absolute in the aforesaid terms with no order as to costs.

12. All the parties, including the District Court, to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]