

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.561 OF 2019**

Kizhanathan Varadharajan Venugopal ... Applicant/Appellant
(Original Defendant No.2)

Vs.

1. Anil Gajanan Guhagarkar } ...Respondents
2. Deepak Gajanan Guhagarkar } (Original Plaintiffs)
3. Miss. Kizhanathan Varadharajan Vimala ...Respondent
(Original Defendant No.1)

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Mr. Manmohan Dudhane, i/b. Dr. Santosh D. Raje, for the Applicant/Appellant.

Mr. Pradeep J. Thorat, for Respondent Nos. 1 and 2.

Mr. Pawan Kumar R. Prasad, Legal Aid Counsel, for Respondent No.3.

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CORAM : S.C. GUPTA, J.

DATED : 11 OCTOBER 2019

P.C. :

. Heard learned Counsel for the parties.

2. This civil revision application challenges a judgment and decree passed by Court of Small Causes at Mumbai in an eviction suit and an appellate decree of that Court affirming the original judgment and decree. The Appellant was original defendant no.2 in the eviction suit, whereas the first and second Respondents therein were the original plaintiffs. Respondent No.3 in the present CRA was original defendant

no.1, who was declared as a tenant in respect of the suit premises by a decree passed in a declaratory suit filed earlier. This suit was a result of *inter se* disputes between legal heirs of the original tenant. The present eviction decree has been passed against the defendants on the ground of bonafide requirement of the landlords. Appeal from that decree has been dismissed by the Appellate Bench of that court. That is how original defendant no.2 has come before this Court in the present CRA.

3. One of the main grounds of challenge to the judgment and decree of the courts below is that there was an earlier suit filed by the predecessor of the plaintiffs (mother of the plaintiffs) on the same ground, i.e. bonafide requirement of the landlord. It is submitted that during the pendency of the suit, the original plaintiff died and the suit was prosecuted by the legal heirs of the deceased (plaintiffs herein). This suit was dismissed on 16 November 2004 and an appeal therefrom was also dismissed on June 2004. It is submitted that the present suit was accordingly barred on the ground of *res judicata*. The trial court has come to a conclusion that the bonafide need asserted in the earlier suit was different from the bonafide need of the landlord urged in the present suit. The Court has observed that in the present suit, the ground of eviction, i.e. bonafide need of the suit premises, was claimed for both plaintiffs herein, i.e. plaintiff nos.1(a) and 1(b), both being heart patients, requiring assistance or companionship of the married daughter of plaintiff no.2 to look after their day-to-day problems, emergency hospitalization, constant attention, etc. On the other hand, in the earlier suit what was pleaded was that plaintiff no.1(b), being a heart patient, was in need of company of one of his daughters for his heart problems.

The Court observed that when the earlier suit was filed, none of the daughters of plaintiff no.1(b) was married. However, as far as the present suit is concerned, the averment was that plaintiff no.2 had undergone a heart operation and now was in need of his daughters, including his just married daughter, and for accommodating her and her family, including her husband and minor daughters, separate premises were required, as the present accommodation was insufficient for their accommodation. Likewise, it was averred that plaintiff no.1 was also a heart patient, being unmarried and alone, and required the company and assistance of the daughters of plaintiff no.2. The trial court assessed these requirements as new circumstances. The appeal court has agreed with the trial court and has concurrently come to a finding that the bonafide need alleged in the present suit was different from the need alleged earlier by the mother of the plaintiffs.

4. There is no infirmity to be found in the assessment of the courts below. The original suit was filed in the year 2001. The present suit was filed in 2009. The allegation in the original suit was about medical conditions of plaintiff no.2. In the present suit, the allegations concerned medical conditions of both plaintiffs. Even as far as plaintiff no.2 is concerned, it was submitted that he had, between the date of the last suit and the present suit, undergone a heart operation and was now in need of constant medical assistance. These certainly could be said to be new facts, which were not covered in the earlier suit, though it was also on the ground of bonafide need of the landlord.

5. Alternatively, it is urged by learned Counsel for the Applicant that the medical condition of neither of the plaintiffs was

actually proved. It is submitted that the medical certificates produced by the plaintiffs were taken on record originally subject to objections of the defendants. It is submitted that these were subject to proof and the matter of proof was to be determined at the trial. It is submitted that the conclusion of the courts below on proof of the medical conditions of the plaintiffs suffered from an apparent error inasmuch as these documents were considered as evidence without any proof being tendered about their existence or genuineness. The courts have essentially proceeded on the basis that though these documents were not strictly proved by leading evidence of the doctor, who had issued the certificates, the defendants, in their cross-examination, had not questioned the medical conditions of the plaintiffs deposed to in the oral and documentary evidence by the plaintiffs. Besides, defendant no.1, in her cross-examination, had fairly conceded that the plaintiffs were unable to climb staircase due to their heart problems. In these circumstances, the court accepted the proof of medical conditions of both plaintiffs tendered by the plaintiffs. The approach of the courts below on the proof of medical conditions of the plaintiffs does not exhibit any perversity or unreasonableness. It is a possible conclusion for which there is some supporting evidence. Neither the assessment of evidence nor the conclusion arrived at by the courts below, thus, calls for any interference in the revisional jurisdiction of this Court.

6. There is no merit, accordingly, in the civil revision application. The civil revision application is dismissed.

7. Learned Counsel for the Applicant prays for stay of the decree of eviction. The interim relief in this behalf originally existing in

favour of the Applicant herein had expired on 30 July 2019. During the pendency of this CRA, there was no stay in favour of the Applicant. Now that the CRA has been fully heard and disposed by a reasoned order, there is no warrant for granting any stay in the CRA. The application is rejected.

(S.C. GUPTE, J.)

Smita
Gonsalves

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