

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.7936 of 2018

**(Sultana Parvin Mohd. Sharif and others .vs. Chandrakant Dattatraya
Ruikar)**

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. V.D. Darne, Advocate for Petitioners.
 Mr. Vivek Awachat, Advocate for Respondents.

CORAM : Manish Pitale, J.

DATED : March 05, 2019.

Civil Application No. 643 of 2019

This is an application filed on behalf of the petitioners to bring on record legal representatives of the sole respondent, who died after filing of the present writ petition. The petitioners desire to add five legal representatives, whose details are given in paragraph 3 of the application, to represent the interest of the original respondent who died on 08.11.2018.

2. For the reasons stated in the application, the same is allowed and the aforesaid persons are permitted to be added as legal representatives of the original respondent Chandrakant Dattatraya Ruikar. Consequential amendment be carried out forthwith.

Civil Application No.461 of 2019.

This is an application filed on behalf of the legal representatives of the original respondent, who died during the pendency of the writ petition. This application was filed prior to Civil Application No. 643 of 2019, filed on behalf of the petitioners, to bring the said legal representatives on record. In view of the order passed in Civil Application No.643 of 2019, allowing the

same, there is no necessity to pass any orders in the present civil application. Civil application is disposed of.

Writ Petition No.7936 of 2018

By this writ petition, the petitioners (legal heirs of the original tenant) have challenged concurrent orders passed by the two Courts below whereby decree for eviction and possession has been granted and confirmed in favour of the respondent.

2. The respondent had filed a suit for eviction, possession and for mesne profits bearing S.C.C.S.No.12 of 2012 against the predecessor of the petitioners on 21.07.2012, seeking possession of a shop located in plot no.8,9/2 /2 of sheet no.26, house no.26 at Yavatmal. The aforesaid suit was filed on the ground of bonafide need and material alteration of the suit shop. The need projected by the respondent was that being an Advocate, he desired to open an independent office in the suit shop. It was pleaded that the respondent was functioning from his own house and that there was a dire need of an independent office. It was pleaded that there were certain alterations made in the suit shop by the predecessor of the petitioners, as a result of which, he was liable to be evicted.

3. Upon evidence being led by the rival parties on the basis of the pleadings, the trial Court framed issues pertaining to bona fide need, material alteration and comparative hardship. On the basis of the evidence

and the material on record, the trial Court found that the respondent had proved the aspect of bonafide need and comparative hardship in his favour, while material alteration of the suit shop could not be proved. On these basis, the trial Court granted decree in favour of the respondent.

4. Aggrieved by the same, the petitioners who had by now come on record as legal heirs of the original tenant, filed Regular Civil Appeal No. 76 of 2017 before the District Court, Yavatmal. By impugned order dated 26.03.2018, the aforesaid appellate Court dismissed the appeal and confirmed the findings of the trial Court. The petitioners have filed the present writ petition challenging the aforesaid two orders passed by the Courts below.

5. Mr. V.D. Darne, learned counsel for the petitioners submitted at the outset that the decree passed in favour of the respondent was without jurisdiction because a clear dispute as regards the title of the suit shop was raised by the original tenant and that in such a situation, the trial Court did not have jurisdiction to entertain the suit filed by the respondent. It was contended that despite specific objection in that regard being raised, the two Courts below did not refer to the same and thereby committed a grave error. Apart from this, it was contended that the findings rendered on the question of bonafide need and comparative hardship were also not sustainable on the basis of the evidence on record.

6. On the other hand, Mr. Awchat, learned counsel for the respondent, now represented through his legal representatives, submitted that the trial Court had found that there were no pleadings in the written statement of the original tenant as regards the dispute pertaining to title of the respondent and that, therefore, there was no question of the trial Court not going into the suit for eviction and possession on merits. It was submitted that the findings rendered by the two Courts below on the question of bonafide need and comparative hardship was supported by the material on record and that, therefore, there was no substance in the present writ petition.

7. Heard counsel for the parties and perused the record.

8. The first contention raised on behalf of the petitioners regarding jurisdiction of the trial Court is required to be considered. In this regard, the learned counsel appearing for the petitioners has relied upon judgment of the Hon'ble Supreme Court in the case of **Budhu Mal .vs. Mahabir Prasad** reported in **AIR 1988 Supreme Court 1772**, to contend that the trial Court in the present case ought not to have entertained the suit filed by the respondent and that the plaint should have been returned, in view of the dispute pertaining to title raised in the present case.

9. A perusal of the impugned judgment and

order dated 25.04.2017 passed by the trial Court in the present case shows that it has been clearly observed that the essential pleadings regarding the respondent not being owner of the suit shop were not raised on behalf of the original tenant, i.e. the predecessor of the petitioners. In the absence of pleadings, the petitioners cannot be allowed to contend that the trial Court in the present case did not have jurisdiction to entertain the suit because a dispute regarding the title arose in the present matter. The judgment relied upon by the learned counsel for the petitioners is clearly distinguishable because in the said case there was serious dispute regarding title raised by the defendant. Even otherwise, the Hon'ble Supreme Court in the said judgment has observed that under the provisions of the Provincial Small Cause Courts Act, 1887, it would not be obligatory on the Court to invariably return every plaint once the question of title is raised by the tenant. The question of returning plaint would depend on the facts and circumstances of each case. In the present case, since the original tenant failed to raise appropriate pleadings in respect of dispute of title of the respondent, the reliance placed on the aforesaid judgment cannot be of any help to the petitioners.

10. As regards the question of bonafide need, the trial Court found that the family of the respondent had 8 members living in a house consisting of three rooms and the respondent was also running his office in the residential premises. In this situation, it was found that the need projected by the respondent pertaining to the

suit shop for opening an independent office was justified and that, therefore, the suit deserved to be decreed. On the question of comparative hardship, the trial Court found that while the respondent did not have any other accommodation available to satisfy the bonafide need, it had come on record that the petitioners did have another shop where they could continue their business of electrical repairs.

11. The Appellate Court agreed with the findings of the trial Court upon appreciation of the evidence on record. Being the last Court on facts, the findings rendered by the appellate Court do assume importance. The learned counsel for the petitioners was unable to demonstrate any perversity or error in the concurrent findings rendered by the two Courts below and, therefore, no case was made out for invoking writ jurisdiction in the facts and circumstances of the present case.

12. In view of the above, this Court finds that the present writ petition is without any merit and accordingly it is dismissed.

13. The petitioners are directed to hand over vacant and peaceful possession to the legal representatives of the respondent, who have now come on record, on or before 15.06.2019.

JUDGE