

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 63 OF 2020

Runja Bandu Ubale] ... Applicant

V/s.

Chintaman Govind Ubale	]	
(Since deceased) Through LR.	]	
1. Rukhamini Chintaman Ubale	]	
2. Chandrakant Chintaman Ubale	]	
3. Rajendra Chintaman Ubale	]	
4. Kalpana Shyam Bhalerao	]	
5. Asha Mohan Ranshoor	]	
6. Usha Kishor Shardul	]	
7. Ravindra Chintaman Ubale	]	
(Since deceased) Through his LR.	]	
1. Mangesh Ravindra Ubale	]	
2. Vanita @ Rani Ravindra Ubale	]	
8. Mahendra Chintaman Ubale	]	
9. Rahibai Kisan Kedare	]	
(Since deceased) Through her LR.	]	
A. Sugandha Kisan Kedare	]	
(Since deceased) Through her LR.	]	
A.A. Prakash Waman Gund	]	
B. Indira Kisan Kedare	]	
10. Shahabai Sambhaji Wagh	]	
(Since deceased) Through her LR.	]	
A. Ashok Sambhaji Wagh	]	
B. Nana Sambhaji Wagh	]	
11. Gaubai Gangadhar Sansare	]	... Respondents

Mr. Ganesh S. Bhat for Applicant.
Mr. Milind M. Sathaye for Respondents.

CORAM : A.S. GADKARI, J.

RESERVED ON : 6th September 2021.

PRONOUNCED ON : 30th November 2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith.

By consent of learned counsel for the respective parties, taken up for 'Final Hearing'.

2. Heard Mr.Bhat, learned Advocate for the Applicant and Mr.Sathaye, learned Advocate for the Respondent. Perused record.

3. Applicant-Original Defendant (Tenant) has filed the present Revision Application impugning the Judgment and Order dated 4th September 2019 passed in Regular Civil Appeal No. 194 of 2012 preferred by him thereby dismissing the said Appeal with costs by the learned District Judge-2, Malegaon, District Nashik and confirming the Judgment and Order dated 5th October 2012 passed in Regular Civil Suit No. 101 of 1992, whereby the suit for eviction preferred by the Respondents has been decreed and the Applicant has been directed to handover vacant possession of the rented premises within stipulated period.

4. Applicant is the Original Defendant No.1-Tenant in Regular Civil Suit No. 101 of 1992 filed by the Respondents for eviction of the Applicant on the ground of arrears of rent; recovery of rent and bonafide requirement of

the landlord. The Original Defendant Nos.2, 3 & 4 are sisters of Applicant and were formal parties to the said suit. The suit premises comprises of 2 rooms situated on Survey Nos.1368 and 1369 owned by Respondents. Record indicates that, during the pendency of the said suit, Original Plaintiff Chintaman Govind Ubale expired and his legal heirs have been brought on record. It is the case of the Respondents that, they are owner of the suit premises and the Applicant herein is residing in the suit premises as a tenant. Since 10th September 1982 the Applicant did not pay rent to the Respondents. The family of Original Plaintiff had grown and for accommodating family members, he was reasonably and *bonafide* required the suit premises. It is also the case of the Respondents that, the Applicant herein has acquired suitable alternate premises for his family. That the suit premises was and is in dilapidated condition and hence, the Respondents were seeking possession of the suit premises. The Respondents therefore issued notice to the Applicant for claiming arrears of rent from 10th September 1982 to 9th August 1992 and sought possession of the suit premises.

5. As the Applicant did not vacate suit premises, the Original Plaintiff Chintaman Govind Ubale filed present Regular Civil Suit No. 101 of 1992 in the Court of Civil Judge Junior Division at Manmad.

After receipt of suit summons, Applicant appeared in the said suit and resisted it by filing Written Statement below Exh.9 and additional Written

Statement below Exh.35. Applicant denied the landlord-tenant relationship between the parties herein. He pleaded that, he is co-owner of suit premises by succession through Bandu Punja Ubale, by also contending that, Govind Vithu Mahar i.e. father of Original Plaintiff along with Dhondu Punja Ubale, Bapu Punja Ubale and father of Applicant namely Bandu Punja Ubale purchased the plot/land beneath the suit premises by contributing equal share towards its sale price. Applicant further contended that, the Original Plaintiff took disadvantage of illiteracy of the Applicant's father and got the land beneath suit premises mutated in his sole name. Applicant also put forth a case of ownership by way of adverse possession, as he was and is continuously and uninterruptedly in use and occupation of the suit premises for more than 12 years and therefore there was no question paying any rent to the Respondents. Record further discloses that, by filing counter claim, the Applicant also sought declaration that he is owner of $\frac{1}{4}$ share in the suit premises, as he is in use, occupation and possession of it for more than 12 years continuously and uninterruptedly. Applicant therefore prayed to decree the counter claim by dismissing the suit filed by the Original Plaintiff.

6. The Trial Court framed issues below Exh.10 and also framed additional issues below Exh.10A. To substantiate his claim, the Respondents examined Respondent No.2 Chandrakant Chintaman Ubale as PW-1. His evidence is at Exh.50. Respondents also examined PW-2 Yusuf Bohari

(Exh.65), who is a photographer by profession. Applicant examined himself as DW-1. His evidence is at Exh.75. Applicant also examined Bhika Bandu Ubale as DW-2 (Exh.93).

The Trial Court after recording evidence and hearing the learned Advocates appearing for the respective parties was pleased to decree the said suit filed by the Respondents by its Judgment and Order dated 5th October 2012 and directed the Applicant to handover vacant possession of the rented premises to the Plaintiffs within 3 months from the date of passing of the said decree and also granted consequential reliefs in that behalf.

Regular Civil Appeal No.194 of 2012 preferred by the Applicant has been dismissed with costs by the learned District Judge-2, Malgaon, District Nashik, by its impugned Judgment and Order dated 4th September 2019.

7. At the outset, it is to be noted here that, the Applicant has adopted contrary defences in his Written Statement and Counter Claim. At the first instance, he adopted a defence that, he became owner of the suit premises by way of adverse possession. It is the settled position of law that, the tenant cannot be permitted to put his claim of adverse possession over the tenanted premises against a landlord. The tenant cannot be permitted to raise claim of adverse title against his own landlord and he is estopped from denying the title from his own landlord. It is to be further noted here that, a

person by way of adverse possession claims title against the rightful owner of the immovable property.

8. In the present case, the Applicant raised a plea of succession through Bandu Punja Ubale towards the land beneath the suit premises. He contended that, Govind Vithu Mahar along with Dhondu Punja Ubale, Bapu Punja Ubale and Bandu Punja Ubale, i.e. father of Applicant, had purchased the land beneath the suit premises by paying equal consideration towards it. The evidence produced by Respondents indicates that, the grant of land (Exh.56) beneath the suit premises was issued by the Government in favour of the father of Original Plaintiff initially for a period of 30 years. The name of Original Plaintiff was subsequently mutated in Revenue Record. The name of Applicant and/or his father does not reflect in the revenue record and therefore the plea of the Applicant in that behalf cannot be accepted. The evidence on record further clearly discloses that, the Applicant in his cross-examination has admitted that, since long he is residing in the suit premises as a tenant at the monthly rent of Rs.10/- and therefore the defence raised by the Applicant that he is owner by succession and/or he became owner of the suit premises by way of adverse possession does not hold substance in it.

9. Apart from the fact that, the grant (Exh.56) for the land beneath the suit premises issued in favour of father of Applicant in the year 1942, it is to be noted here that after the demise of Govnid Vithu Mahar the said land

was mutated in favour of Original Plaintiff and his sisters in the year 1972. Therefore there is no substance in the contention of the Applicant that he became co-owner of the suit property through succession from his father, namely, Bandu Punja Ubale. Record further reveals that, a notice (Exh.61) was issued by the Chief Officer, Municipal Council of Manmad directing the Respondents to repair the suit premises in possession of the Applicant as tenant. The Assessment Receipt (Exh.84) issued by Municipal Council of Manmad for the year 2003-2004 is also in the name of Original Plaintiff which records the name of Ramakant Ubale and Changunabai Ubale as occupants in the suit premises. It is thus clear that, the Respondents are the landlords of the suit premises and the Applicant herein is the tenant.

10. As far as the plea of Respondents for bonafide requirement of suit premises is concerned, the Plaintiff in his evidence has categorically stated that, the family of Original Plaintiff has grown up and sons and daughters of Plaintiff are married. The Plaintiffs therefore require suit premises bonafide for their own use. Evidence on record further reveals that, there are 7 issues to the Original Plaintiff and all are married. As of today there are 13 members in the family of the Plaintiffs, who are residing in one room admeasuring 15 x 15 ft.. It is an admitted fact on record that, out of 4 rooms constructed by the Plaintiffs, only 1 room is in their possession. Applicant could not bring on record contrary evidence thereto that the Plaintiff is having any other

premises than the suit premises for their use and occupation. It is therefore clear that, the Respondents require suit premises for accommodation of their family members reasonably and bonafide.

11. As far as comparative hardship is concerned, the Plaintiff has brought on record the fact that the Applicant is occupying suitable alternate premises. Plaintiff in his evidence has brought on record the fact that, the son of Applicant is in possession of Plot No.80 in Gat No.358/6/18 admeasuring 112.50 sq.mtrs. and has constructed a bungalow on it and the Applicant along with his son and daughter in-law is residing there. The Applicant has not countered the said evidence by adducing cogent evidence in that behalf and the said fact of alternate accommodation has gone unchallenged on record. It is therefore clear that, the Applicant is residing in the suitable alternate premises along with his son and daughter-in-law and is not in need of suit premises. The Plaintiff has also brought on record a fact that, the suit premises is in dilapidated condition and a wall of suit premises had collapsed in the year 1988. Plaintiff has also produced on record a notice dated 8th October 1988 (Exh.61) issued by the Municipal Council in that behalf. As the wall of suit premises had collapsed in the year 1988, it is more so the reason for the Applicant to shift himself from it and to reside at suitable alternate accommodation along with his son and daughter-in-law.

12. Thus the ground of bonafide requirement and acquisition of

suitable alternate accommodation by the Applicant has been proved by the Respondents beyond preponderance of all probabilities.

13. A corollary of the aforestated deliberation is that, both the Courts below have exercised their jurisdiction vested in them properly and there is no material irregularity in the Judgments and Orders passed by them. The Revision Applicant has failed to make out any case to interfere with the concurrent finding recorded by both the Courts below.

The present Revision Application is accordingly dismissed.

14. Upon a query made by this Court, learned counsel for the Applicant on instructions made a statement before this Court that, apart from Applicant no other third person is in possession of the suit premises. That the Applicant has not created any third party right, title and/or interest in the suit premises till today. The said statement is accepted.

15. Applicant is directed to handover vacant and peaceful possession of the suit premises in favour of the Respondents within a period of one month from today.

Applicant is also directed to pay arrears of rent as has been directed by the Trial Court in para No.3 of the operative part of Judgment and Order dated 5th October 2012 within one month from today.

16. No Order as to costs.

[A.S. GADKARI, J.]