

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

34 CRA NO.41 OF 2023
WITH CA/11682/2022 IN CRA/41/2023

KAMALBAI JAGANNATH PATIL DECEASED LRS. VIJAYA
RAMESH MAHAJAN AND ORS
VERSUS
BHAGWANDAS GULABCHAND SOMANI DECEASED LRS.
MANOJ AND ORS

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Advocate for Applicants : Mr. V. D. Hon (Senior Counsel) i/b
Mr. A. D. Sonkawade, Mr. Hon Ashwin V.
Advocate for Respondent Nos.1-a to 1-c : Mr. Vijay B. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 06.11.2023

PER COURT :-

1. Heard the learned senior counsel for the applicants and the learned counsel for the respondents.
2. The landlady has preferred the present civil revision application against the judgment of dismissal of eviction suit. The checkered history of the litigation was that in 1982, the applicant landlady had filed a suit for eviction against the present respondent. In that suit, it was her pleading that the present respondent was not the tenant. However, doctor Mungad was the real tenant. After the parties led the evidence, it was held in suit i.e. Regular Civil Suit No.348 of 1982 that

Bhagwandas Somani, the father of present respondent was the tenant in the suit premises. The plea of the landlady that he was trespasser was discarded. Besides, the said plea, the suit for bonafide requirement was also dismissed. The appeal against the said judgment bearing Regular Civil Appeal No.365 of 1986 was also dismissed.

3. After the above two judgments, the landlady again filed the suit for eviction against Bhagwandas Gulabchand Somani. However, he died during the pendency of the suit ; hence, his legal heirs brought on record. In this suit, again the landlady came with a case that Bhagwandas was a trespasser. However, she was seeking eviction not for herself but for her daughters. She wanted to settle her daughters in the suit premises, which is residential.

4. The trial Court appreciating the pleading held that since the plaintiff/landlady did not admit the landlord-tenant relationship, her bonafide need under the Maharashtra Rent Control Act could not be considered. Further, the Trial Court observed that since the issue of the status of Bhagwandas was settled in Regular Civil Suit No.348 of 1982, raising the same plea again is *res-judicata* under Section 11 of the Civil

Procedure Code. The Appellate Court also confirmed the findings.

5. Learned senior counsel for the applicants would submit that the reasons for bonafide ground in earlier suit and the present suit were not similar. There is no bar in the Rent Act to file a suit for eviction, if the bonafide need is changed. The suit of the plaintiff/landlady was not only for eviction, but also for the arrears of rent. In such circumstances, the Trial Court ought to have understood that it was not purely the suit against the trespasser but also the tenant. But both Courts have committed error of law. Hence, civil revision application deserves to be allowed.

6. Per contra, learned counsel Mr. Patil for the contesting respondent would submit that the findings as regards the *res-judicata* are legally correct and proper. Since the plaintiff did not admit the defendants as a tenant, her prayer for eviction or bonafide need could not be considered. Both Courts have recorded the correct findings.

7. The applicants have an apprehension that the issue of *res-judicata* may be misunderstood, if in future, a fresh suit for eviction on any of the grounds available under Maharashtra

Rent Control Act is filed. He submits that due to misconception of law, again, similar objections may be raised. Hence, it should be clarified.

8. For a Rent Suit, the cause of action, considering the facts and circumstances, may be recurring. The Rent Control Act does not bar a subsequent suit on the same ground if its nature is changed. The rent law has been developed to such an extent, that the tenant may oppose the bonafide need of the landlord, if it ceases to exist, during and after the suit is decided.

9. Under these circumstances, it cannot be said that in future, if the landlady would file a fresh suit as provided under the Maharashtra Rent Control Act showing the change in their bonafide need, such suit would not be barred by the principle of *res-judicata*.

10. The *res-judicata* issue was dealt with by both Courts only restricted to the claim of the plaintiff/landlady treating the respondent Bhagwandas as a trespasser. Therefore, both Courts did not commit the mistake. The Courts are also right in observing that since the suit was not filed admitting the

respondent as tenant, the eviction sought for under the Maharashtra Rent Control Act could be considered.

11. In the facts and circumstances of the case and observations made above, the Court proceed to pass the following order :

ORDER

- (i) The civil revision application stands dismissed.
- (ii) It is clarified that the right of the landlord filing a subsequent suit for eviction against the tenant on any of fresh ground/s is available under the Maharashtra Rent Control Act and not barred under the principle of *res-judicata*.
- (iii) No order as to costs.
- (iv) Civil Application stands disposed of accordingly.

(S. G. MEHARE, J.)

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