



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO. 10381 OF 2024

JAGDISH DIGAMBAR CHAUDHARI
VERSUS
VAISHALI SUDHIR PATIL AND OTHERS

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Advocate for the Petitioner :
Mr. Tushar Shinde h/f. Mr. Shinde Chandrakant K.
Advocate for Respondent No.1: Mr. Gholap Ajit Manohar

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CORAM : ARUN R. PEDNEKER, J.
DATE : 24th SEPTEMBER, 2024

PER COURT:

1. Heard
2. The brief facts of the case are that the respondent no.1/ plaintiff has filed the suit for eviction against the petitioner on the ground of bonafide requirement of the family of the plaintiff as the family has expanded and that there are six member in the family. The defendants have resisted the suit for eviction. It is the contention in the written statement that the landlord does not require the property for the bonafide need. Issues are already formulated in the matter, wherein issue no.2, is as under:-

“whether the respondent / plaintiff proved that she is in bonafide need of the premises ?”

The matter has proceeded substantially and two interim orders passed in the suit were challenged before this court by the tenant / petitioner. In Writ Petition No.14840 of 2021 filed for recall of witness, this court, at para 9, observed as under:

“9. The issue framed in the suit is particularly, whether the plaintiff has established that the defendants have obtained the premises somewhere else than the suit premises and the burden is upon the plaintiff to establish so and not upon the defendants. In the said circumstances, the cross-examination of the plaintiff's witness has not rendered any assistance to the defendants and even further re-examination and recalling of the witness will not in any way benefit the defendants.”

3. This court held that the issue is framed in the suit particularly, whether the plaintiff has established that the defendants have obtained the premises somewhere else than the suit premises and the burden is on the plaintiff to establish so and not upon the defendants. In the circumstances, the cross-examination of the plaintiff's witness has not rendered any assistance to the defendants and even further re-examination and recalling of the witness will not in any way benefit the defendants.

4. Thereafter, another Writ Petition No.9044 of 2022 was filed challenging the interim order passed by the learned trial court, whereby the application of the defendant for issuance of the witness summons to

Junior Telecom Officer, was rejected by the trial court. The writ petition was also dismissed.

5. This court has noticed that the matter is pending for the long period of time. It is noticed that the suit for eviction is filed in the year 2012.

6. The defendant / petitioner, thereafter, has filed application for amendment of written statement. The application filed by the defendant for the amendment is rejected by the trial court by impugned order dated 01.07.2024. The defendant / petitioner seeks amendment to the pleadings of written statement as under:

“दुरुस्ती - वादीहेच सासरे मयत झालेले आहेत, व ते पूर्वीपासून मयत होईपावेतो खिरोदा ता. रावेर, येथेच राहत होते, तसेच त्यांचे खिरोदा येथे घर व शेती आहे. त्याचप्रमाणे वादीची सासू हि देखील खिरोदा येथे पूर्वीपासून आजतागायत राहत आहे. तसेच वादीची मुलगी हि बंगलोर येथे नौकरी निमित्त राहत आहे व ती दाव्यातील मिळकतीत राहत नाही. तसेच वादीचा मुलगा हा शिक्षणकमी पुणे येथे राहत आहे व तो दाव्यातील मिळकतीत राहत नाही. तसेच वादीची आई हि दावा मिळकतीत राहत नाही. तिचे मालकीचे भुसावळ येथे दोन माजली घर मिळकत आहे. ती सादर घर मिळकतीमध्ये राहते. वादीचे ताब्यात दाव्यातील नमूद बिल्डिंगमध्ये वरचे मजल्यावर सुमारे चार खोल्या असून, त्या वादीचे ताब्यात असून, तळमजल्यावर पूर्वेकडील दोन खोल्या बरेच वर्षांपासून रिकाम्या असून वादीचे ताब्यात आहे. त्यामुळे वादीस प्रतिवादीचे ताब्यातील जागेची स्वतःकरिता अगर कुटुंबियांचे रहिवासाकरिता कोणतीही गरज, आवश्यकता नाही. वादीचे ताब्यातील मिळकतीमध्ये फक्त वादी व तिचे पती हे दोघेच राहतात. वादीची मागणी खोटी या अप्रामाणिक आहे. प्रतिवादी व त्याचे कुटुंबियांना दाव्यातील मिळकत रहिवासाकरिता प्रामाणिकपणे आवश्यक आहे. प्रतिवादी याना दुसरी कुठलीही मिळकत रहिवासाकरिता दाव्यातील मिळकतीशिवाय नाही.”

7. Challenging the impugned order, the learned counsel appearing for the petitioner / defendant submits that the pleadings has to be permitted to be liberally amended. He relies upon para 19 in the case of **Usha Balasaheb Swami and others Vs. Kiran Apparao Swami and others, 2007 AIR (SC) 1663** and submits that the pleadings has to be permitted to be amended liberally. He also submits that there are changed situation on the ground during pendency of the proceedings and they are required to be brought on record.

8. Per contra, the learned counsel for respondent no.1 / plaintiff submits that the suit is pending for long period of time and the issue as regards the bonafide need is already formulated by the learned trial court that the burden is cast upon the plaintiff that the family of plaintiff required the same for their occupation. He submits that if further additional evidence the petitioner intends to file he may do so in the course of his evidence and no further pleadings would be required to be altered to that effect.

9. Having considered the rival submissions, it is to be noted that the matter is pending for long period of time from the year 2012 before the learned trial court. The issue of the bonafide requirement is also raised in the suit and the burden is cast upon the plaintiff that the plaintiff is required to prove that the plaintiff requires the suit property

for bonafide need. The amendments, which the petitioner / defendant intends to bring upon is more in the nature of his evidence. The petitioner / defendant wants to bring about on record that the father-in-law has expired and that earlier he was residing at some other place and not in the house on which the bonafide requirement is claimed. So also, what is stated is that mother-in-law does not stay in the property. So also, the daughter is staying in Bangalore, and does not stay in the suit property. So also, son is residing at Pune for education purpose and does not stay in the suit property and the mother also does not stay in the property.

All these are the matters of evidence and as the issue is already formulated and there is no prohibition for the defendant to show that the landlord and children are not staying in the suit property, and any further amendment to the pleadings would prolong the proceedings.

10. In view of the same, the writ petition is not entertained and the writ petition is accordingly dismissed.

[ARUN R. PEDNEKER, J.]

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