

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 8 OF 2019

Sudhakar Bhagwan Shiral, since deceased
by his Legal Heirs

1) Sachin/Sachiv Sudhakar Shiral & Ors.Applicants
(Orig.Appellants/Defendants)

: Versus :

Bhagwan Vanappa Kabade and Ors.

....Respondents
(Orig. Respondents/Plaintiffs)

Ms. Anjali R. Shiledar-Baxi, *for the Applicant.*

Mr. Rakesh Agrawal *i/by. Mr. Parmeshwar Bhise, for Respondent
No.6.*

CORAM : SANDEEP V. MARNE, J.

Dated : 11 June 2024.

P.C. :

1. Applicants/Original Defendants have invoked revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 challenging the judgment and order dated 30 May 2018 passed by the Ad-Hoc District Judge-I, Barshi dismissing Regular Civil Appeal No. 300 of 2014 (Old RCA No. 132 of 2013) and confirming the decree dated 27 February 2013 passed by the Civil Judge Senior Division, Barshi in Regular Civil Suit No. 279 of 2012 (Old RCS No.8/1992). The Trial Court, while

decreeing the suit of Plaintiffs, has directed Applicants/Defendants to surrender vacant possession of the suit property, as well as to pay arrears of rent.

2. Originally, RCS No.8/1992 was filed by five Plaintiffs as members of joint family. However, during pendency of the suit, joint family properties came to be partitioned in the year 1997 and house City Survey No. 4048/b and 4048/f came to the share of Plaintiff Nos. 1 and 2. A Shop admeasuring approximately 65 sq.ft out of house bearing City Survey No.4048/b (admeasuring 5.8 sq.mtrs) and a room admeasuring 88 sq.ft in City Survey No. 4048/f is a suit property in which Defendant No.1- Sudhakar Bhagwan Shiral was inducted as a tenant for the purpose of running grocery shop. Plaintiffs allege that Defendant was in arrears of rent since 1 April 1990. Plaintiffs further pleaded case of *bonafide* requirement and sought recovery of possession of the suit premises from Original Defendant-Sudhakar.

3. During pendency of the suit, Original tenant-Sudhakar passed away on 20 May 2005 and his legal heirs, Sachin (Sachiv), Guddi and Saraswati were brought on record. Also brought on record was Sudhakar's brother, Prabhakar, who according to Plaintiffs, commenced the business of cycle shop in the suit premises after the death of Sudhakar, though Prabhakar is not a tenant in respect of the suit premises.

4. The suit was contested initially by Sudhakar and subsequently by his heirs and Prabhakar by filing Written Statements. Both the sides led evidence in respect of the *bonafide* requirement of the

Plaintiffs. After considering the pleadings and evidence, the Trial Court decreed the suit on 27 February 2013 holding that the defendant was a willful defaulter and that the Plaintiffs proved *bonafide* requirement. The grounds of non-user and acquisition of alternate premises were however rejected. The Trial Court further held that Defendant No.4-Prabhakar is not the monthly tenant in respect of the suit premises. Original Defendant-Sudhakar had filed Misc. Application No. 13 of 2012 (Old Misc. Application No. 65 of 1991) for fixation of standard rent. The Trial Court fixed the standard rent of the suit premises at Rs.22/- per month and directed the Defendants to pay arrears of rent to the Plaintiff.

5. Aggrieved by the eviction decree passed by the Trial Court, the Defendants filed Regular Civil Appeal No. 132 of 2013, which was renumbered as Regular Civil Appeal No. 300 of 2014 before the District Court, Barshi. The Appeal has however been dismissed by the Appellate Court by decree dated 30 May 2018. Applicants have accordingly filed the present Civil Revision Application challenging the decrees of the Trial and the Appellate Court.

6. I have heard Ms. Baxi, the learned counsel appearing for the Revision Applicants. She would submit that sufficient evidence was produced before the Trial Court to show ownership of several alternate premises by Plaintiffs and their family members. That therefore the ground of *bonafide* need has erroneously been accepted by the Trial and the Appellate Court. She would take me extensively through the evidence to demonstrate that Plaintiff's family members held several alternate premises and that many children of Plaintiff No.1 were settled outside

Barshi and those staying within Barshi had alternate premises. She would submit that Sudhakar and Prabhakar were carrying on business in the suit premises jointly and that the Trial and the first Appellate Court have erred in holding that Prabhakar is not the monthly tenant. That it is proved in evidence that children of Sudhakar are jointly running cycle shop in the suit premises after Sudhakar's death. She would further submit that the decree of the Trial and the Appellate Court suffer from patent errors warranting interference by this Court in exercise of revisionary jurisdiction.

7. *Per-contra*, Mr. Agrawal, the learned counsel appearing for Respondents/Original Plaintiffs would oppose the Revision Application. He would submit that there are concurrent findings recorded by the Trial and the Appellate Court in which this Court need not interfere under its revisionary jurisdiction. That Prabhakar gave specific admissions in the evidence that he is not the tenant. That he further admitted that Bharat was in genuine need of the tenanted premises. He would therefore submit that in view of series of admissions given by Defendant-Prabhakar, no serious error can be traced in the view taken by the Trial and Appellate Court. He would pray for dismissal of the Revision Application.

8. I have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through the judgments of the Trial and the Appellate Court, as well as the pleadings and evidence on record. There are concurrent findings of facts recorded against the Revision Applicants by the Trial and the Appellate Court. Admittedly, Original Defendant-Sudhakar died during pendency of the suit on 20 May

2005. Prabhakar was initially not impleaded as party Defendant to the suit, which was pending since the year 1991. Prabhakar did not have any qualms about the same and never made any attempts to get himself impleaded in the suit until Sudhakar's death in the year 2005. It is only after Sudhakar passed away that Prabhakar surfaced in the suit. What is more pertinent to note is the fact that the application for fixation of standard rent was filed by Sudhakar alone in the year 1991. If Prabhakar was indeed a tenant in respect of the suit premises, the said application for fixation of standard rent ought to have been filed by Prabhakar jointly with Sudhakar. The fact that he did not do so is clearly indicative of absence of status as a 'tenant' in respect of the suit premises. To make things worse for Prabhakar, he gave specific admission in his cross-examination that 'हे म्हणजे खरे आहे कि, मी स्वताःहा या जागेचा भाडेकरी नाही'. Furthermore, when Sudhakar filed Written Statement in his capacity as original Defendant, he did not contend that Prabhakar was also a tenant in respect of the suit premises. The evidence indicates that Prabhakar and Sudhakar had different ration cards with distinct addresses. That Prabhakar did not reside in the suit premises but resided at a different address at Bhimshankar, Station Road, Barshi. In my view, therefore there is overwhelming evidence that Prabhakar is not the tenant in respect of the suit premises.

9. Admittedly, it is Prabhakar who operated cycle shop in the suit premises after Sudhakar's death. He had no right to do so. The very fact that Sudhakar's children permitted Prabhakar to occupy the suit premises is itself indicative of the fact that Sudhakar's children were not in need of the suit premises. It has also come in evidence that at the time of

filing of the suit, Sudhakar's son Sachin/Sachiv was in service and therefore there is no question of he operating the shop in the suit premises.

10. Though Ms. Baxi has strenuously attempted to contend that the family of the Plaintiffs owned several premises and that they were not in need of the suit premises, in my view, there are concurrent findings of facts recorded by both the Courts indicating that as many as 12 members of Plaintiff No.1 resided in small, tenanted house at City Survey No.366 owned by Kattimani. Thus, the findings of bonafide requirement cannot be said to be perverse by any means.

11. In my view, therefore no case is made out for exercise of revisionary jurisdiction by this Court to interfere in well-reasoned decrees of the Trial and the first Appellate Court. No jurisdictional error is committed by either of the Courts.

12. Civil Revision Application is **dismissed** with no order as to costs. However, the Revision Applicants are granted six months' time to vacate the suit premises.

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[SANDEEP V. MARNE, J.]