

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

WRIT PETITION NO.6220 OF 2004

Santosh Alias Balu Dattatray
Bhosale And Ors.

...Petitioners

Versus

Jagdish Gopinath Malushte

... respondent

Mr. R. D. Suryawanshi for Petitioners.

Mr. Nikhil Wadikar a/w. Mr. Rohan Sawant, Mr. Sarthak Utangale,
Mr. Vedant Joshi i/b. Utangale & Co., for Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 23 JANUARY 2024

P.C.:

1. This Writ Petition is filed by original defendants challenging the concurrent findings recorded by the Trial Court and First Appellate Court, on the ground of bonafide requirement.
2. The Respondent/Landlord had filed a suit for eviction as regards the suit premises, which is a shop at Ratnagiri city. The suit was filed under the Bombay Rent Act for eviction on the grounds of bonafide requirement, default in payment of rent and premises is required for repairs. As far as bonafide requirement is concerned, it was the case of the Respondent/Landlord that the suit shop is required for conducting business of transport by the wife of the Landlord. It was further submitted that the Landlord was a truck driver.

3. The written statement was filed by Defendant No.4, 5 , 6 and 7, and a separate written statement was filed by Defendant No.2.

4. Evidence was led on behalf of the Plaintiff, by the Plaintiff himself and one more witness was examined by the Plaintiff. The Defendants chose not to enter into the witness box.

5. The Trial Court by judgment and decree dated 2 May 1998, decreed the suit on the ground of bonafide requirement. Being dissatisfied with the judgment and decree passed by the Trial Court, the Defendants filed an Appeal before the District Court at Ratnagiri. The District Court Ratnagiri passed judgment and decree dated 9 July 2004 dismissing the Appeal filed by the Original Defendants and confirmed the eviction decree passed by the Trial Court on the ground of bonafide requirement.

6. The present Writ Petition challenges the concurrent finding recorded by the Trial Court and the District Court, on the ground of bonafide requirement.

7. It was the case of the Plaintiff that he requires the suit shop for the purpose of running the business. It was the further case of the Plaintiff that the Defendant Nos.1 to 5 are running business in different premises and not in the suit premises. It is further stated that the Defendant No.6 is running business at Mumbai and Defendant No.7 has a separate shop premises at Teli Aali and also at Pethkilla in Ratnagiri City. Therefore, according to the Plaintiff, there will be no hardship if eviction decree is passed against the Defendants. Though Defendants filed their written

statements, they have come out with a case that the suit for eviction against the Defendant Nos.6 and 7, as trespassers would not be maintainable in the rent court. Therefore, the Trial Court had no jurisdiction to entertain and decide the suit.

8. It has been recorded in the Appellate Court judgment that the Defendant No.6 and 7 are the brothers of Original tenant Dattatraya and their case was that Dattatraya was representing the Joint Hindu Family. It is an admitted fact that the tenancy was granted only in the name of Dattatraya. Therefore, if the Defendant Nos. 6 and 7 have come before the Court as brothers of Original Tenant Dattatraya, and tried to pay rent to landlord, at the most their case would be after death of original tenant. Their case would be that they fall under the definition of Section 5 (ii) (c) of the Bombay Rent Act. In such a situation, the suit also against the Defendant Nos. 6 and 7 would be maintainable under the Rent Act.

9. The fact remains that the Defendants though have tried to make submission as regards maintainability of the suit and requirement of the landlord, it is a matter of record that the Defendants did not enter into the witness box to prove their case. In fact, written statement is filed only by the Defendant No.2, the Defendant No.4 and the Defendant No.5 and Defendant No.6. Rest of the Defendants have chosen not to file their written statements. The fact that none of the Defendants have entered into the witness box to prove their case, according to me, the case put forth by the Defendants is not proved. The Plaintiff by examining himself has put forth his case. Though the Plaintiff was cross examined by the

Defendants, nothing adverse could be proved against the Plaintiff.

10. There are no reasons shown to entertain the concurrent findings recorded by both the courts below on bonafide requirement.

11. The present petition must fail and is dismissed. No cost.

(RAJESH S. PATIL, J.)