

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 530 OF 2024

1. Shantaram Sadu Karkar
2. Shubhangi Shantaram Karkar
3. Ranjana Shantaram Karkar
4. Santoshi Shantaram Karkar
5. Sachin Shantaram Karkar

....*Petitioners*

(*Orig. Appellants/Orig. Defendants*)

: *Versus* :

1. Sudhir Ganpat Pawaskar
2. Vinayak Ganpat Pawaskar
3. Dilip Ganpat Pawaskar
4. Yashwant Ganpat Pawaskar

....*Respondents*

(*Orig. Respondents/Orig. Plaintiffs*)

Mr. Poras Shah, for the Petitioner through V.C.

Mr. N.M. Gawankar i/by. Mr. Shreyas N. Gawankar, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 14 December 2024.

Pronounced On : 20 December 2024.

JUDGMENT :

- 1) ***Rule.*** Rule made returnable forthwith. With the consent of the parties, petition is taken up for hearing and final disposal.

2) Petitioners have filed this petition challenging the judgment and order dated 23 November 2023 passed by the Principal District Judge, Ratnagiri dismissing Regular Civil Appeal No.70/2017 and confirming the eviction decree dated 13 September 2017 passed by the 5th Joint Civil Judge Junior Division, Ratnagiri in Regular Civil Suit No.51/2015.

3) Facts of the case, as pleaded in the plaint, are that Plaintiffs are the real brothers who are owners of structure bearing House No.1750A, Peth Shivapur, Ratnagiri. One room admeasuring 10 ft x 10 ft in the said House No.1750A, are the **suit premises**. Defendant No.1 was inducted as a monthly tenant in respect of the suit premises. Plaintiff pleaded that the suit premises were required for their bonafide need. That Plaintiff No.2-Vinayak was earlier residing at Mumbai and on account of insufficient premises, he shifted to Ratnagiri alongwith his wife and started residing in balance portion of property coming to the share of the Plaintiffs comprising of main room, pooja room, kitchen and bathroom. It was further pleaded that Plaintiff No.1-Sudhir was serving as Driver in Mumbai and was planning to opt for voluntary retirement and was desirous of shifting to Mumbai. Plaintiff additionally alleged that Defendants illegally constructed a bathroom and shed in the open portion abutting the suit premises and committed acts contrary to Section 16(1)(b) of the Maharashtra Rent Control Act, 1999 (**M.R.C. Act**). Plaintiff accordingly sought recovery of possession of the suit premises from the Defendants.

4) Defendants appeared in the suit and filed Written Statement contesting the claim of the Plaintiff. They contended that Plaintiff No.2 was not residing at Ratnagiri and was residing in his own flat at Goregaon (West), Mumbai. So far as Plaintiff No.1 is concerned,

he was also residing at Mumbai. Defendants denied putting up any permanent construction and clarified that the place for privacy is created for bathing of women in the house on a temporary basis without using any material for permanent construction. Defendants accordingly prayed for dismissal of the suit.

5) Based on pleadings of the parties, Trial Court framed issues. Plaintiff examined Sudhir Ganpat Pawaskar (Plaintiff No.1). Defendant examined Shantaram Sadu Karkar (Defendant No.1). After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit by judgment and order dated 13 September 2017 on the ground of bonafide requirement of the Plaintiff. However, the ground of erection of permanent construction, as well as default in payment of rent was rejected. Defendants were directed to handover possession of the suit premises to the Plaintiffs.

6) Defendants filed Regular Civil Appeal No.70/2017 in the Court of District Judge, Ratnagiri. However, the Appellate Court dismissed the Appeal by judgment and decree dated 23 November 2023. Aggrieved by the concurrent decrees directing eviction of the Defendants, Petitioners-Defendants have filed the present petition.

7) Mr. Shah, the learned counsel appearing for the Petitioners would submit that the Trial and the Appellate Courts have erred in decreeing the suit of the Plaintiff on the ground of bonafide requirement. That five family members of the Defendants occupied a tiny space admeasuring 100 sq.ft and do not have any other place to reside in Ratnagiri City. As against this, all Plaintiffs resided at Mumbai and set up a false case of bonafide requirement. That Plaintiffs already have 3 rooms and a bathroom in their possession and even during their occasional visits, have sufficient space to reside during their intermittent

visits. That Plaintiff No.1 has still not opted for voluntary retirement despite passage of 9 long years of institution of the suit, which itself shows false pretext of voluntary retirement set up by him. That since bonafide requirement itself is not proved, there was no need to go into the issue of comparative hardship. However, even if bonafide requirement was to be proved, comparative hardship ought to have been answered in favour of the Defendants and against the Plaintiffs. He would submit that Plaintiff No.2 was not examined and therefore his bonafide need is not established. That Plaintiff No.1 continues to reside in Mumbai even after passage of 9 long years from the date of institution of the suit. He would therefore submit that the need expressed by the Plaintiffs is neither bonafide nor reasonable. Mr. Shah would submit that the real intention behind filing the suit is to oust the Defendants and secure possession of the suit premises for redevelopment of the entire property. He would submit that the Defendants are not averse to redevelopment of the property and are willing to co-operate with such redevelopment process provided their rights are protected as provided under Section 16(6) of the M.R.C. Act. He would therefore pray for setting aside the decrees passed by the Trial and the Appellate Courts.

8) The petition is opposed by Mr. Gawankar, the learned counsel appearing for Respondents-Plaintiffs. He would submit that there are concurrent findings recorded against the Defendants by the Trial and the Appellate Courts, and no case is made out for interference in such concurrent findings in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. He would submit that Plaintiff No.1 bonafide requires the suit premises for his residence as the rest of the premises in possession of the Plaintiffs are occupied by Plaintiff No.2 and his wife. That Plaintiff No.2 and his wife reside in narrow strip with width of just 9 ft. comprising of main room,

pooja room and tiny kitchen. That there is no space available for accommodation of Plaintiff No.1 who is on the verge of his retirement and is desirous of settling at Ratnagiri. That Plaintiff No.1 is unable to take voluntary retirement on account of non-availability of residence at Ratnagiri. That in any case, Plaintiff No.1 is going to retire on attaining the age of superannuation on 31 October 2028 and even if he does not opt for voluntary retirement, he would most certainly need the suit premises for his residence. He would deny the allegation about eviction of Defendants being sought for redevelopment of the property contending that half portion of the entire property is owned by the other members of Pawaskar family and Plaintiffs cannot individually redevelop the property in their possession. He would pray for dismissal of the petition.

9) Rival contentions of the parties now fall for my consideration.

10) Plaintiffs initially sought eviction of Defendants on three grounds of bonafide requirement, erecting permanent structure without landlord's consent and default in payment of rent. The suit ultimately came to be decreed on the solitary ground of bonafide requirement by rejecting the other two grounds of erecting of permanent structure and default in payment of rent. Plaintiff did not file cross-objections before the Appellate Court and accordingly the Appellate Court has upheld only the ground of bonafide requirement. Therefore, the short issue that arises for consideration is whether Plaintiffs have made out the ground of bonafide requirement for ejection of the Defendants. There are concurrent findings against the Defendants on the ground of bonafide requirement.

11) Perusal of the plaint would indicate that Plaintiffs raised following pleadings in support of their plea for bonafide requirement in paras-5 and 6 therein, which reads thus :

५. वादी यांना पुढील तपशिलाप्रमाणे दावा मिळकतीची स्वतःचे वापरासाठी आवश्यक आहे. बादी हे चार भाऊ असून त्यापैकी मोठे भाऊ विनायक हे पुर्वी मुंबई मध्ये हॉटेल व्यवसाय करीत होते. त्यांचेकडील गोरगाव येथील जागा राहणेस अपुरी पडू लागल्यामुळे ते व त्यांची पत्नी सौ. वैशाली रत्नागिरी येथे रहावयास आले असून मूळ घर १७५० पैकी दक्षिणेकडील त्यांचे भागात ते राहतात. तेथेही दर्शनी खोली, मधली देवखोली त्याला लागुन किचन व त्याला लागुन बाथरूम अशी फक्त ५ फुट रुंदीची चिंचोळी पट्टी आहे तेथे विनायक व त्यांची पत्नी हे दोघेच राहू शकतात. मुंबई गोरगाव येथे विनायक व यशवंत यांचा सुमारे ५५० चौ. फुटाचा ब्लॉक आहे त्यामध्ये सध्या विनायक यांचा मोठा मुलगा व नोकरी करणारी मुलगी आणि यशवंत व त्यांचे सोबत त्यांचे नोकरी करणारे २ मुलगे असे ५ जण राहतात. त्यांचेसोबत विनायक व त्याची पत्नी सौ. वैशाली हेही राहत होते. परंतु त्यांना ती जागा फारच अपुरी पडू लागली म्हणून मे २०१३ पासून विनायक व त्यांची पत्नी रत्नागिरी येथे येऊन राहू लागले आहेत.

६. वादी क्रमांक १ हे मुंबईमध्ये ड्रायव्हर म्हणून नोकरी करतात त्यांचे नोकरीला २५ वर्षे पूर्ण झाली आहेत. त्यांची पत्नी ७ वर्षांपूर्वी वारली त्यांना एक मुलगा असून तो आता २४ वर्षांचा आहे. मुंबई मध्ये त्यांची स्वतःची राहणेची सोय नाही. सध्या ते त्यांचे नोकरीचे ठिकाणी मिळालेल्या क्वार्टर्समध्ये राहतात. मुंबईमध्ये ड्रायव्हरचे काम फारच घोकादायक झाले असल्यामुळे त्यांना स्वेच्छानिवृत्ती स्विकारून स्वतःचा टुरिस्ट गाडीचा व्यवसाय करणेसाठी रत्नागिरी येथे येणेचे आहे. नोकरी सोडलेवर त्यांना मिळालेला क्वार्टर्स सोडावा लागणार आहे व त्या नंतर त्यांना स्वतःचे राहणेची अन्य कोठेही सोय नाही त्यामुळे त्यांना रत्नागिरी येथे येवून राहणे शिवाय दुसरा पर्याय नाही तसेच त्यांना रत्नागिरी येथे टुरिस्ट गाडीचा व्यवसाय करणेचा आहे. त्यामुळे त्यांना स्वतःचे वापरासाठी दावा मिळकतीची सद्भावाची गरज आहे. त्यामुळे भाडे नियंत्रण कायदा कलम १६ (१) (जी) प्रमाणे दावा मिळकतीचा कब्जा मिळणेचा वादी यास हक्क अधिकार आहे व त्या कारणासाठी दावा मिळकतीचा कब्जा मिळावा ही वादींची मागणी आहे. प्रतिवादींचे खोलीचे पश्चिम बाजूस श्रीमती चव्हाण नावाचे दुसरे भाडेकरू आहेत त्यांचेकडील खोलीही वादी क्रमांक १. यास स्वतःचे वापरासाठी आवश्यक आहे त्यामुळे वादी त्यांचे विरुद्धही दुसरा दावा मे. कोर्टात दाखल करीत आहेत.

12) Thus, though the suit was jointly filed by the four Plaintiffs, bonafide requirement of only Plaintiff No.1 pleaded. It was pleaded that Plaintiff No.2-Vinayak was operating hotel business at Mumbai. That he shifted to Ratnagiri along with his wife. That at Goregaon, Vinayak and Yashwant owned flat admeasuring 550 sq.ft. in which Vinayak's son and daughter, Yashwant and his two children were residing after Vinayak shifted to Ratnagiri. However, though Plaintiffs described that

the width of the premises in possession of Vinayak was only 9 ft., a specific admission was given that only Vinayak and his wife are residing in the said house. It is pleaded in para-5 of the plaint that Plaintiff No.4-Yashwant, his children and children of Vinayak were residing at Mumbai. The Plaint proceeds on a premise that the balance portion of the House was sufficient to accommodate only Vinayak and his wife Vaishali and was not sufficient for addition of any further family member. Thus, bonafide requirement of Vinayak was not pleaded.

13) Coming to the pleadings in para-6 of the plaint, Plaintiff pleaded bonafide requirement of Plaintiff No.1-Sudhir. It is pleaded that he was working in Mumbai as a Driver and was occupying service quarters at Mumbai. That he desired opting for voluntary retirement and commence his tourist business. That he would be required to vacate the service quarters after retirement and does not have any other premises for residence.

14) Thus, what is actually pleaded is only bonafide need of Plaintiff No.1-Sudhir. However, it is an admitted position that till date, Sudhir has not opted for voluntary retirement and continues to work at Mumbai. According to Mr. Gawankar, Plaintiff No.1-Sudhir is going to retire on 31 October 2028. Thus, pleaded case of Sudhir wanting to retire from service on voluntary basis pleaded in the suit filed on 28 January 2015 is ultimately proved to be false.

15) Plaintiffs did not examine Plaintiff No.2-Vinayak to prove that the premises in his possession were either insufficient or could not accommodate any further family members. The property in possession of the Plaintiffs comprises of 3 rooms and a bathroom. The exact area of the portion in possession of the Plaintiffs is not reflected anywhere in evidence. Plaintiff No.2-Vinayak owns a flat at Goregaon. It is also

admitted that Plaintiff No.3 has a flat at Goregaon. Defendants' witness led evidence that Plaintiff No.2-Vinayak actually resides at Mumbai. He also gave evidence about Plaintiff No.1 owning a flat at Mumbai. That Plaintiff Nos.2 and 3 also owned their respective flats at Mumbai. Defendants' witness led evidence about plans of Plaintiff to redevelop the property. He led evidence about notice dated 21 November 2014 being served to the Plaintiffs alleging plans for redevelopment of the building, which remained unresponded.

16) The conspectus of the evidence appearing on record would indicate that no real requirement of the Plaintiff has been established in the present case. Though the suit was filed for bonafide requirement of Plaintiff No.1, what is expressed by him is a mere fanciful wish or the desire to take voluntary retirement and shift to Ratnagiri. It appears improbable that Plaintiff No.2, who is established in service at Mumbai, would have opted for voluntary retirement for residing in 100 sq.ft. premises at Ratnagiri. This is further buttressed by the conduct of Plaintiff No.2 who continued working at Mumbai for 9 long years after filing of the suit and never opted for voluntary retirement. Though, Mr. Gawankar has sought to suggest that Plaintiff No.1 would need the suit premises atleast after his superannuation on 31 October 2028, in my view, this is not a pleaded ground nor any evidence is led in that regard. It would be too dangerous to assume at this juncture what Plaintiff No.1 would do after his retirement from service after 31 October 2028. In any case, when the Suit was decided on 13 September 2017, Plaintiff No.1 had 11 long years of service remaining and the Trial Court could not have upheld his bonafide requirement.

17) True it is that Plaintiff is the best judge of his own bonafide requirement and the tenant cannot dictate terms on a landlord. However, in the present case, the need expressed by the Plaintiff does

not appear to be bonafide at all. This is not a case where any of the Plaintiffs residing in the concerned portion of the property were finding it inconvenient to accommodate large family. In remaining portion of the property comprising of 3 rooms plus bathroom, only Vinayak and his wife were allegedly residing (according to the Defendants, Vinayak actually resides in his own flat at Mumbai). Thus, this is not a case where Vinayak was finding it difficult to accommodate growing family in those 3 rooms and bathroom. The bonafide requirement was premised on mere wish of Plaintiff No.1 to opt for voluntary retirement at some point of time in future and settling down at Ratnagiri. Therefore, what is expressed is a mere fanciful wish and not a bonafide or reasonable need.

18) Coming to the issue of hardship, five members of Defendant's family reside in tiny room of 10 ft x 10 ft = 100 sq.ft. There is nothing on record to indicate that Defendants own or possess any other premises in Ratnagiri City. Though Mr. Gawankar has relied upon admission given by Defendants witness about availability of premises at Village-Bhaveadom located at a distance of 10-12 kms, the said premises at Village cannot be construed to mean availability of suitable alternate accommodation within Ratnagiri City. As against the Defendants, each of the Plaintiffs have their own residence at Mumbai and the whole theory of Plaintiff No.1 shifting to Ratnagiri appears to be completely imaginary. On the contrary, what appears believable is the attempts on the part of the Plaintiffs to redevelop the property by ousting the Defendants.

19) Upon being queried as to whether Defendants have any objection to the redevelopment process, Mr. Shah after taking instructions from his clients, would clarify that the Defendants are ready to fully cooperate with the redevelopment as and when undertaken by

the Plaintiffs. In my view, therefore with a view to obviate any further litigation between the parties, it would be appropriate to direct the Defendants to co-operate with the redevelopment process, as and when undertaken by Plaintiffs.

20) I accordingly proceed to pass the following order :

(i) Judgment and order dated 23 November 2023 passed by the Principal District Judge, Ratnagiri in Regular Civil Appeal No.70/2017, as well as judgment and order dated 13 September 2017 passed by the Civil Judge Junior Division, Ratnagiri in Regular Civil Suit No.51/2015 are set aside.

(ii) Regular Civil Suit No.51/2015 is dismissed.

(iii) It is however clarified that in the event Plaintiffs undertake redevelopment of the suit premises, Defendants shall co-operate with the Plaintiffs in such redevelopment process so long as Plaintiffs allot premises equivalent to the carpet area of the suit premises to the Defendants in the redeveloped building. Accordingly, if and when Defendants are shown sanctioned plans for redevelopment of the new building reflecting alternate premises of equivalent carpet area, Defendant shall vacate possession of the suit premises within a period of 2 months from the date of demonstration of such plans.

21) With the above directions, the Writ Petition is **allowed**. Rule is made absolute.

[SANDEEP V. MARNE, J.]