

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 178 OF 2024

Vaibhavkumar Maganlal Shah

....*Applicant*

: *Versus* :

1. Mr. Laxman Dnyanoba Wanarase
and Ors.

....*Respondents*

Mr. Sushant Prabhune, for the Applicant.

Mr. Ritvik Joshi, for the Respondents.

CORAM : **SANDEEP V. MARNE, J.**

Dated : **16 DECEMBER 2024.**

P.C. :

1) Revisionary jurisdiction of this Court is invoked under the provisions of Section 115 of the Civil Procedure Code, 1908 (**Code**) for setting up a challenge to the judgment and order dated 22 February 2024 passed by the District Judge-3, Baramati, Pune dismissing Regular Civil Appeal No.34/2016 and confirming the eviction decree passed by the Joint Civil Judge Junior Division, Baramati on 12 January 2016 in Regular Civil Suit No.127/2013.

2) I have heard Mr. Prabhune, the learned counsel appearing for the Revision Applicant and Mr. Joshi, the learned counsel appearing for the Respondents/Plaintiffs. I have also gone through the findings recorded

by the Trial and the Appellate Courts, as well as the pleadings and evidence appearing on record.

3) Plaintiff's suit has been decreed on the solitary ground of bonafide requirement by recording a finding of Plaintiffs suffering greater hardship in the event of eviction decree being refused. Plaintiffs' pleaded case of bonafide requirement in respect of the suit shop is Plaintiff No.1 being desirous of commencing tailoring business in the suit shop on account of his unemployment, as well as the skills acquired by him in tailoring. Defendant came out with a case in the written statement that Plaintiffs have possession of adjoining premises in which they had inducted tenant/licensee and that therefore the bonafide requirement was not genuine.

4) The sheet anchor of submission of Mr. Prabhune is that the Plaintiffs suppressed availability of adjoining premises admeasuring 10 sq. mtrs. in the plaint and that the information got disclosed only through cross-examination of Plaintiffs' witness. He would submit that it was the duty of the Plaintiffs to disclose in the plaint availability of all premises if decree was sought on the ground of bonafide requirement. He has placed reliance on the judgment of this Court in Vasant Mahadeo Gujar & Ors. V/s. Baitulla Ismail Shaikh and Ors¹.

5) True it is that, Plaintiffs did not disclose availability of possession of premises admeasuring 10 sq.mtrs in the plaint. In the cross-examination, Plaintiffs witness admitted that the property in the name of his father was 30 sq. mtrs, out of which, portion admeasuring 20.6 sq.mtrs was let out to the Defendant, whereas, the balance portion is in the possession of the Plaintiffs. The Plaintiffs' witness however

1 2015 GoJuris (Bom) 1325

clarified the position that the said portion admeasuring 10 sq.mtrs was in dilapidated condition.

6) In ordinary course, the conduct of the Plaintiffs in not making disclosure about availability of neighbouring premises would be sufficient for the purpose of denying decree of eviction on the ground of bonafide requirement. Mr. Prabhune is not entirely wrong in relying upon judgment of this Court in *Vasant Mahadeo Gujar* (supra) in which this Court has cast a duty on the landlord to disclose all premises possessed by him before seeking the decree on the ground of bonafide requirement. However, in the unique facts of the present case, apart from neighbouring premises being tiny admeasuring only 9.04 sq. mtrs, it has also come on record that the said portion admeasuring 9.04 sq. mtrs is in dilapidated condition. Though Defendant led evidence to show that the condition of the suit premises is healthy, the clarification issued by the Plaintiffs' witness about dilapidated condition of neighbouring premises admeasuring 9.06 sq.mtrs is not really disputed. This is not a case where substantially large premises are available for the Plaintiffs to commence the tailoring business. It has come on record that some portion of the property standing in the name of the Plaintiffs has been acquired for road widening. It is difficult to ascertain the exact area which has remained in possession of the Plaintiffs. Assuming that the entire balance portion is in the possession of the Plaintiffs and not affected by road widening, it would still admeasure just 9.06 sq. mtrs. and would be grossly insufficient for the Plaintiff No. 1 to commence their tailoring business. In that view of the matter, non-disclosure of the neighbouring premises admeasuring 9.06 sq.mtrs cannot *ex-facie* be the reason for denying the decree of eviction in favour of the Plaintiffs.

7) Mr. Prabhune has strenuously submitted that the issue of comparative hardship has neither been framed and nor answered by the Trial Court. I am unable to agree. The Trial Court has fused the issue of bonafide requirement and comparative hardship in Issue No.3, though ordinarily both the issues ought to have been independently framed and answered. However, mere fusing of the two issues in Issue No.3 has not caused any prejudice to the Defendant. In fact, the Defendant produced D.W.2 (his brother) to lead evidence on the issue of comparative hardship. Thus the issue of comparative hardship has been framed and answered by the Trial Court.

8) Mr. Prabhune, would then rely upon the provisions of sub-section (2) of Section 16 in support of his contention that the Trial and the Appellate Courts have not framed the issue nor have conducted an independent enquiry as to whether decree for partial ejectment could be passed so as to fulfill the alleged need of the Plaintiff in respect of premises by combining some portion of the suit premises with the portion already in possession of Plaintiffs. He submits that it is mandatory that the Trial Court conducts an independent enquiry within the meaning of Section 16(2) of the Maharashtra Rent Control Act, (M.R.C. Act) while deciding the suit for eviction of the tenant on the issue of bonafide requirement. He has placed reliance on judgment of this Court in *Bismilla Bee Sk. Chand & Anr. Vs. Mohd. Anward Mohd. Akhtar*². In my view, Defendant however never gave any suggestion to the Trial Court either in pleadings or in evidence or during the course of arguments that it was possible to pass a partial decree for eviction without prejudice to his main contention seeking dismissal of the entire suit. The Trial Court therefore did not have any occasion to consider the issue of partial ejectment. Mr. Prabhune would however submit that it

² 2010 (2) Bom. C.R. 63

is the duty of the court to conduct such inquiry notwithstanding the fact that the issue is not raised by parties. However in my view, for holding that partial ejectment was possible by subdividing the suit premises or amalgamating the portion in possession of Plaintiffs, there needs to be some evidence that such course of action was feasible. There is no evidence on record as to whether demolition of the wall dividing the suit premises and the neighbouring portion would sustain the structural strength of the entire structure and whether it was permissible to redistribute the entire property admeasuring 30 sq.mtrs by retaining lesser portion in possession of the Plaintiffs. Thus, the decree for partial eviction in the present case was impermissible in absence of any evidence led by the parties to that effect.

9) Coming to the issue of comparative hardship, it has come on record that the Defendant has secured a share in the ancestral property through partition deed dated 2 January 2003. There is an admission to the effect that there are shops in the said ancestral property and all the shops were found to be shut on the date of cross-examination. It therefore became questionable as to why Defendant was not able to shift his shop in the said ancestral property, rather than latching on to the possession of the tenanted premises. Mr. Prabhune has attempted to salvage the situation by submitting that under the Partnership Deed, the actual residential premises admeasuring 47 sq. mtrs on the 2nd floor of the ancestral property has come to the share of the Defendant, in which he cannot conduct his business of general stores. Though, it is not really relevant to make an enquiry into the wisdom of the 6 brothers from Defendant's side in subdividing the property in such a manner that Defendant (who conducts shop business) secured only residential premises on the 2nd floor, there is no justification on record as to why Defendant did not secure allotment of one of the

shops in the ancestral property. Also of relevance is the fact that Defendant has not made any attempt to secure possession of the Shops which have allegedly gone to the share of his brothers for shifting his business out of the suit premises. He can always take one of the shut shops on rent. He cannot allow the shops in his own ancestral property to be kept shut and not allow Plaintiff No. 1 (who is owner) to do his tailoring business from the suit premises. In my view, therefore the issue of comparative hardship has again rightly been answered by the Trial and the Appellate Courts against the Defendant and in favour of the Plaintiffs.

10) The conspectus of the above discussion is that no patent error can be traced in the concurrent findings recorded by Trial and the Appellate Courts for this Court to exercise of revisional jurisdiction under Section 115 of the Code. The Revision Application is devoid of merits. It is accordingly **dismissed**.

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[SANDEEP V. MARNE, J.]