

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

CIVIL REVISION APPLICATION NO.281 OF 2024

Popat @ Pradeep Shankar Sankpal
deceased through Legal Heirs

....Applicants

V/S

Suresh Tukaram Kalyankar & Anr.

....Respondents

Mr. Sandeep Koregave a/w Ms. Pallavi A. Karanjkar *for the Applicants.*
Mr. Drupad Patil i/b Mr. Rugwed R. Kinkar *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 02 AUGUST 2024.

P.C.:

1 The revisionary jurisdiction of this Court is invoked under section 115 of the Code of Criminal Procedure, 1908 (**Code**) challenging concurrent findings recorded by Civil Judge Junior Division, Kolhapur while decreeing Regular Civil Suit No.630 of 2014 on 13 January 2020 as confirmed by District Judge, Kolhapur by dismissing Regular Civil Appeal No.83 of 2020 on 7 February 2024. Both Trial as well as the Appellate Court had directed eviction of the Revision Applicants on the ground of *bonafide* requirement of the Plaintiffs and cause of greater hardship to them.

2 I have heard Mr. Koregave, the learned counsel appearing for Revision Applicants and Mr. Patil, the learned counsel appearing for Respondents/original Plaintiffs.

4 After having considered the submissions canvassed by the learned counsel appearing for parties and after going through the impugned judgments passed by the Trial and the Appellate Court as well as relevant record of the proceedings, it is seen that the Revision Applicants/ Defendants are occupying three rooms in suit premises spread across 59.94 square meters equivalent to 644 sq. ft. As against this it has come in evidence that the Plaintiffs are residing alongwith their family in a single room at property No.2472 'C' Ward, Shaniwarpeth, Kolhapur. Though Mr. Koregave has strenuously attempted to suggest that Plaintiffs' property at No.2472 is suppressed in the Plaint in addition to the claim of Plaintiffs residing in only single room, it is seen that the Plaintiffs clearly disclosed their residence at No.2472 in the cause title of the Plaint. So far as Plaintiffs residence in only one room of property at No.2472 is concerned, true it is that there is no specific averment in the Plaint that Plaintiffs occupied only one room in the said property. Mr. Koregave particularly highlighted presence of various rooms as reflected in the property card extract issued by Kolhapur Municipal Corporation in respect of property bearing No.2472. He has submitted that the said property comprises of ground plus two upper floors with several rooms and therefore it is difficult to believe that the Plaintiffs and their family members would reside in only one room out of the said structure. That in absence of any pleading to that effect, an opportunity has been denied to the Defendants for cross-examining Plaintiffs witnesses. However perusal of finding recorded by the Trial Court and the Appellate Court in the judgments would indicate that the Defendants specifically admitted in the cross-examination that Plaintiffs occupied only single room in property at No.2472. Since a clear admission is given by the Defendants in the cross-examination, in my view,

there was no need for the Plaintiffs to separately prove occupation of only single room in property No.2472.

5 Considering the position that Plaintiffs are residing in only one room at property No.2472 as against Defendants occupying three rooms in the suit premises, the Trial and the Appellate Court have rightly drawn the finding of *bonafide* requirement and cause of greater hardship to Plaintiffs. The concurrent findings therefore do not warrant any interference in revisionary jurisdiction of this Court, Civil Revision Application is accordingly **rejected**.

(SANDEEP V. MARNE, J.)

6 After the order is pronounced, Mr. Koregave would request that the statement made on behalf of the Respondents/Plaintiffs on 8 May 2024 for not taking any coercive steps before Executing Court be continued for a period of eight weeks. The request is opposed by Mr. Patil. Considering the fact that the said statement is continuing since 8 May 2024, the same shall continue for a period of eight weeks from today, subject to the condition that the Revision Applicants shall not create any third party rights in respect of the suit premises.

(SANDEEP V. MARNE, J.)

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