
(2015) 12 BOM CK 0027

In the Bombay High Court

Case No : Civil Revision Application No. 14 of 2014

Mohanlal Bhikchand Rathi

APPELLANT

Vs

Ashok Trimbak Joshi

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Citation : (2016) 1 ABR 589

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : R.R. Mantri, Advocate, for the Appellant; S.D. Kulkarni, Advocate h/f Sanket S. Kulkarni, for the Respondent

Final Decision : Disposed Off

Judgement

T.V. Nalawade, J.—The Revision is filed to challenge the judgment and order of Regular Civil Suit No. 29 of 2010 which was pending in the Court of District Judge, Kopargaon. The appeal filed against the judgment and decree of Regular Civil Appeal No. 160 of 2008 by original plaintiff is allowed by District Court and the suit filed for eviction under the provision of Maharashtra Rent Control Act, 1999 is decreed on the ground of bonafide requirement for personal use. Both the sides are heard.

2. Present respondent, the plaintiff is the owner of house property bearing CTS No. No. 366/67 situated at Kopargaon, District Ahmednagar. On the ground floor there is a shop having size of 44.24 Sq.Mtrs. which is in possession of present petitioner. It is contended that about 30 years prior to the date of suit, the suit property was given to Bhikchand Rathi on annual rent of Rs. 250/-. Bhikchand died and so his son Mohanlal, the present Petitioner continued the possession as the tenant.

3. The suit was filed on the ground of default committed in making payment of rent also but no relief is granted by District Court on this ground and so the pleadings and evidence in respect of only the other ground need to be

considered. It is the case of the plaintiff that he has two adult sons and they have no other space for doing business. It is the case of plaintiff that one of the sons of plaintiff is handicapped. It is contended that the place on the ground floor is convenient for them and so they want the premises back for personal use and the requirement is bonafide.

4. It is the case of plaintiff that defendant owns house property in Shivaji Housing Society, Kopargaon and he is owner of many plots and immovable properties and so no hardship will be caused to him if the order of eviction is made against him. Other contentions were made that son of defendant viz. Shrikant is now occupying the premises and he has entered his name in the assessment record of local body and this was done without taking the consent of the landlord. Notice of termination was given on 3rd April, 2008 for using the ground of default.

5. The defendant contested the matter by filing written statement. The defendant contended that the building of plaintiff is a three storied building and there is one more tenant on the ground floor. The defendant denied that the plaintiff is in need of the suit premises for personal use, for doing some business for the family. He contended that one son of plaintiff is engineer and is doing M.E. course in Pune and there is no possibility that he will return to Kopargaon. It was contended that the other son is not only physically handicapped but is mentally retarded and he cannot move from one place to other without help of others and it is not possible that he will do the business in the suit premises. Defendant admitted that he owns one flat having size of 700 Sq.ft. He contended that in all 12 persons of his family are living in that flat and all of them are living on the income of the shop which is being run in the suit premises.

6. The defendant contended that there is no alternate accommodation for him to shift the business. He contended that the plaintiff owns agricultural land and a land which is already converted for non-agricultural use in Kopargaon. He also contended that plaintiff has share in property CTS No. 365 standing in the name of father of plaintiff which is adjacent to the road and which is situated in front of the suit property. He contended that the said premises can be used by the plaintiff if plaintiff wants to do some business.

7. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The evidence of plaintiff is in accordance with the aforesaid pleadings. He further deposed that his wife has undergone heart surgery and doctor has advised her not to climb staircase. He gave evidence that due to this circumstance he wants to have some space on the ground floor and he also wants to start business in the suit premises. He has given evidence that both his sons are unmarried and at present he is in possession of area of around 600 sq.ft. in this building and so he requires the possession of the suit property. He gave evidence that the suit property is situated in thickly populated area and is suitable for him. He gave evidence that there are many shops in that locality and at present many shop premises are available on rent basis where the defendant

can shift his business. He gave evidence that the defendant is not making such attempt and he is causing harassment to the plaintiff.

8. In the cross examination, suggestions are given to land lord that he owns some plots in Kopargaon and he has disposed of those plots. He admitted that he is having some plots and he has already sold out some plots. However, the evidence does not show that he has constructed portion in the same locality where he can start the business. He has denied that the building situated in front of the present plot, CTS No. 365 belongs to him. He has given evidence that the said property is given to the share of his brother. The said brother is examined by him. The brother has given similar evidence. During evidence, he specifically deposed that he wants to start some business for his handicapped son in the suit premises. In the cross examination he gave one admission that financial condition, if compared, it can be said that defendant is comparatively poor than him.

9. For giving evidence in rebuttal, the defendant examined his son Shrikant. His evidence is as per the pleadings in the written statement. He has given evidence that as one son is physically handicapped and mentally retarded he cannot do any business and so the requirement is not bonafide. He has deposed that plaintiff himself is a retired Professor and is getting pension and so he does not require the suit premises for doing some business. He has given evidence that his family depends on the income of this shop for livelihood. He has deposed that he has no other space available where the business can be shifted. He has given evidence that the property like plots owned by plaintiff are sold. He has given evidence that there are two more buildings like CTS No. 365 and CTS No. 123 to 126, however, he admitted that the shops situated in CTS No. 123 to 126 are in the name of Padmakar, brother of plaintiff. He has deposed that partition has not taken place amongst these three brothers. It is already observed that one brother is examined by plaintiff to show that building bearing CTS No. 365 is with the said brother. It does not look proper that false case is put up by plaintiff that building No. 365 is allotted to the share of the said brother. It is a fact that present building stands in the name of plaintiff and other CTS No. 123 to 126 stand in the name of Padmakar and so it is natural and probable that CTS No. 365 is allotted to the third brother.

10. In the cross examination, Shrikant has admitted that on this road so many new buildings are constructed and some buildings are lying vacant on that road. He has tried to deny that the shops are available. His evidence shows that at a distance of 40, 50 ft. there are many shopping complexes. He has avoided to give evidence whether some shops are available in any shopping complex. His evidence does not show that he had approached the owner of any particular building and he had requested to give some space for his shop. Thus, his evidence does not show that he made attempt to find alternate accommodation where the shop could have been shifted.

11. The Trial Court did not consider the aforesaid evidence and due to

circumstance that the plaintiff's financial condition is comparatively sound and his one son is not in a position to do anything on his own, the trial Court held that the requirement is not bonafide. There was no reason for the trial Court to disbelieve the case of plaintiff that plaintiff wanted to start some business for his handicapped son. Though the son is handicapped and mentally retarded, if plaintiff wants to create some source of income for him such contention could have been accepted. Plaintiff or his wife can help the handicapped son and it can give a source of income to the said son of plaintiff.

12. When the decision was given by the first Appellate Court, the other son of the plaintiff was still receiving education in Pune. In the present proceeding some civil applications are filed by petitioner, tenant for permission to produce some documents. It was submitted that the record which is now available with the petitioner shows that one son of landlord has completed M.S. course and he has returned to Kopargaon and he is working as a Lecturer in an Engineering College from Kopargaon and so the case that for the use of that son the suit premises is required cannot be believed. One more application is filed by the tenant in which he has shown readiness to surrender some portion of his shop like space of 5"x10" where a Xerox shop can be started for the handicapped son of the plaintiff. On the basis of contentions made in the application and the undertaking given the learned counsel for the tenant submitted that there is no need of giving decree of eviction in respect of entire portion and the harassment of both sides can be avoided. Learned counsel for landlord submitted that this proposal is not acceptable and the space available with the plaintiff, landlord is not sufficient for his family and he wants the suit premises. Another submission was made for tenant that the other tenant having possession of second shop on the ground floor has agreed to vacate the shop by the end of January, 2016 and in view of this compromise, there is no need to give decree in favour of the landlord in the present matter. Learned counsel for landlord submitted that in a suit there was such compromise but it is not certain as to whether the said tenant will hand over possession as per the compromise. He submitted that the dispute is already started and the said tenant has stopped giving the agreed enhanced rent. He submitted that the situation which was in existence on the date of the suit needs to be considered in the matter like present one. He submitted that the son of the landlord has got job of temporary nature in one Engineering College but there is no certainty about this job also and in case he is not given regular appointment after following the procedure, the said son will be also in need of some space.

13. The learned counsel for the Petitioner placed reliance on one reported cases like *Rehman Jeo Wangnoo Vs. Ram Chand and Others*, . In this case, the Apex Court has laid down that it is the duty of the Court to see whether partial eviction as contemplated under the provisions of Rent Control Act is possible and if there is such possibility the Court should direct partial eviction. Another case reported as *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, was cited in which it is laid down that the burden is on landlord to prove that he bonafidely requires the premises though the burden of proving that greater hardship will be

caused to tenant lies on the tenant. In that case also, there was possibility of partial eviction and for consideration that possibility the matter was remanded by the Apex Court. There cannot be any dispute over this proposition made by the Apex Court. Another case relied is from Bhaskar Digambar Choudhary Vs. Bhagwan Vishwanath Fadnis, . While deciding Writ Petition, this Court discussed the provision regarding partial eviction and it is observed that it is the duty of the Court to consider said issue and satisfy itself that no hardship will be caused either to the tenant or to the landlord by passing a decree in respect of part of premises only. Reliance was place on the case reported as M/s. Hotel Rosalia (P.) Ltd. Vs. M/s. Metro Hotels and Others, , Bombay High Court. On facts, it was held that the requirement of the landlord was not genuine, bonafide.

14. On the other hand, the learned counsel for landlord placed reliance on the case reported as Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, . In this case, Apex Court has laid down that landlord is the best judge of his requirement and it is up to him to decide how and in what manner he should live or use his premises. If he proves that he requires that premises, then the Court cannot dictate him to occupy other premises which is available with him. There cannot be any dispute over this proposition. A copy of judgment, delivered by this Court in CRA 156 of 2007 [Janardan S/o Nivrutti Gireme V/s Chirayou S/o Ajit Nagarkar and another] with C.R.A. No. 167 of 2008 [Janardan S/o Nivrutti Gireme V/s Ajit S/o Prabhakar Nagarkar and another] decided on 10th March, 2010 is also produced in which there are observations which are similar to the observations made by the Apex Court.

15. Reliance was placed on case reported as Parashram Tuljaram Belhekar since deceased through his LRs. Vatsalabai Belhekar and others Vs. Tejmal @ Kankamal Mulchand Jain deceased by his legal heirs Shantabai Kankamal Chantedia and others--> . In this case, this Court has laid down that in eviction suit filed on the ground of bonafide requirement the facts and circumstances prevailing on the date of filing of the suit only need to be considered and subsequent developments need not be given much importance. There cannot be any dispute over this proposition also.

16. Reliance was placed on case reported as V. Sumatiben Maganlal Manani (dead) by Legal Representatives Vs. Uttamchand Kashiprasad Shah and Another, . In this case, the Apex Court has discussed the scope of revisional jurisdiction of this Court. It is laid down that if finding of fact is properly arrived at by the Courts below, the High Court should not take the exercise of appreciation of evidence. There cannot be any dispute over this proposition also.

17. In the present case, relevant facts are quoted by this Court. The suit property is situated in thickly populated area. On the first and second floor, the landlord is living with his family and he has his wife and two sons. His one son has returned after completing education and he is having temporary job in a college. The landlord wants to start some business to give a source of income to his handicapped son and for that he wants the suit premises. All these

circumstances and material available is considered by the first Appellate Court and decree is given on the ground of bonafide requirement. It cannot be said that the decision of the first appellate Court is perverse or he has ignored some material which is in favour of the tenant. The tenant is a businessman. It was his duty to start making search for alternate accommodation. He did not make such attempt. It is clear that on meager amount of rent the premises was given to the father of the tenant and only due to that circumstance he wants to continue his possession. This Court holds that it is not possible to interfere in the decision given by the first Appellate Court.

18. In the result, the proceeding stands dismissed.

19. Four weeks time is granted to vacate the premises.

20. Pending civil applications, if any, also stand disposed of.