

(2010) 09 BOM CK 0182

In the Bombay High Court

Case No : Civil Revision Application No's. 145 and 190 of 2009

Rajaram Keshav Dhobi and Nago Keshav Dhobi (dead) APPELLANT

Vs

Narayan Jairam Marathe
 Narayan Jairam Marathe Vs RESPONDENT
Rajaram Keshav Dhobi and Nago Keshav Dhobi (dead)

Date of Decision : 30-09-2010

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 13(1)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 26, 115

Citation : (2011) 2 MhLj 663 : (2011) 1 RCR(Rent) 506

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : B.N. Patil, in Civil Revision application No. 145 of 2009 and S.P. Shah, in Civil Revision application No. 190 of 2009, for the Appellant; S.P. Shah, for Sole in Civil Revision Application No. 145 of 2009 and B.N. Patil in Civil Revision Application No. 190 of 2009, for the Respondent

Judgement

S.S. Shinde, J.—Rule, Rule made returnable forthwith. Heard finally with the consent of parties.

2. Both the Civil Revision Applications are filed, challenging the Judgment and decree dated 11th August, 2009 passed by the Adhoc District Judge-1, Amalner, Dist. Jalgaon, in Regular Civil Appeal No. 15 of 2004. This Court vide order dated 17th February, 2010 in Civil Revision Application No. 190 of 2009 observed that the revision is to be finally heard, at the stage of admission. Further this Court was pleased to call record and proceedings and accordingly record and proceedings are received from the concerned Court.

The applicant in Civil Revision Application No. 145 of 2009 i.e. Rajaram Keshav Dhobi is original plaintiff and the applicant Shri Narayan Jairam Marathe in Civil Revision Application No. 190 of 2009 is original defendant in Regular Civil Suit No. 159 of 1994. The said suit was filed for possession by the land-lord/Plaintiffs on the ground of personal occupation, business and construction for their

residence against the defendants, by claiming a decree for eviction as provided u/s 13 of the Bombay rents, Hotel and Lodging House Rates Control Act, 1947 (here-in-after called as "the Act").

3. Brief facts as disclosed in the plaint are as under:

The plaintiffs claimed to be land-lord of the house property T.P. No. 133 within area of boundaries mentioned in para No. 1 of the plaint. The western site of premises as described in para No. 1 let to the defendant's father by their uncle at monthly rent of Rs. 5.25/- as per English Calendar. The tiled hut on area 16 x 10 erected by the land-lord's ancestor at the suit premises, (here-in-after called it as "suit premises").

The father of defendant died on 14th October, 1993 in house owned by defendant in Gurukul Cooperative Housing Society at Amalner. The defendant is a member of said housing society. He has constructed three rooms house and residing along with his family there. It was contended in the plaint that the defendant unnecessarily retained possession over the suit premises. The plaintiff further contended that, suit premises are required for residence and business and for further construction of entire area of T.P. No. 133. They have prepared a map and sanctioned it by Municipal Council, Amalner. According to plaintiff, they have constructed area which was possessed by them. The remaining proposed construction area is in possession of the defendant, where they want to construct kitchen, latrine etc. But could not construct it. Since the plaintiffs required the suit premises for residence they issued notice dated 15th June, 1994 for termination of tenancy to the defendant. Since defendant failed to handover possession, the plaintiffs filed Suit bearing Regular Civil Suit No. 159 of 1994.

4. The defendant resisted the claim by filing written statement (Exh. 14). The plaintiffs bonafide requirement of suit premises was disputed by the defendants. It was also stated in the written statement that the suit is bad for non-joinder of necessary/certain parties. It was also stated in the written statement, that plaintiffs did file Regular Civil Suit No. 104 of 1974 against the father of the defendant and said suit came to be dismissed. Therefore, principle of res-judicata squarely applies to the case, and therefore, Regular Civil Suit No. 159 of 1994 being barred by principle of res-judicata, should not be heard at all by the Trial Court. The written statement also includes other contentions of the defendant.

5. The Trial Court after closing of the evidence adduced by the parties, written notes of arguments (at Exh. 256 and Exh. 258) respectively, framed necessary issues for determination. The Trial Court has framed as many as seven issues for its determination and consideration. So far personal and bonafide requirement of the plaintiff is concerned, the issue No. 2 was framed by the Trial Court and said issue has been answered in negative. The issue No. 4 i.e. "Whether defendant prove that suit of the plaintiff is false?" is answered in the negative. The another issue i.e. Issue No. 5-A "whether suit is barred by principle of res-judicata?" the said issue is also answered in negative. However, the Trial Court held against the

plaintiffs on the point of bonafide requirement of the suit premises, and further held that the plaintiff is not entitled for possession.

It appears that the Original plaintiff has filed application for amendment of the plaint. By way of said amendment, the plaintiffs pleaded that the defendant has built and acquired suitable residential house in Gurukul Co-operative Housing Society at Amalner, and the defendant is residing therein with his family members. It appears that by way of said amendment the ground was taken in the plaint, that defendant possessed his own house, he is residing in the said house and on that ground, the Court can pass the necessary decree in respect of suit premises. The original defendants filed reply to the amended plaint. It further appears that at the time of final hearing of the suit, the Trial Court, was aware about the amendment brought by the plaintiff. However, it appears that, no separate issue was framed in respect of plaintiff's assertion that the original defendant has constructed and acquired his own house in Gurukul Co-operative Housing Society at Amalner, and he is residing there with his family members.

6. The Trial Court, dismissed the suit with costs, and decree was drawn accordingly.

7. Though the Trial Court, dismissed the suit, the issue No. 4 i.e. "whether defendant prove that the suit of the plaintiff is false? and issue No. 5(A) Whether suit is barred by principle of res-judicata?" have been answered in the negative. Being aggrieved by the findings of the Trial Court on issues Nos. 4 and 5(A) in Regular Civil Suit No. 154 of 1994, the original defendant i.e. Narayan Jairam Marathe filed Civil Appeal No. 14/2004 before the Adhoc District Judge-1, Amalner, Dist. Jalgaon. The original plaintiff i.e. Rajaram Keshav Dhobi also filed Civil Appeal No. 15 of 2004, challenging the judgment and decree in Regular Civil Suit No. 159 of 1994. The specific contention was raised in the said appeal that the issue regarding assertion of the plaintiff that the defendant has constructed and acquired his own house in Gurukul Cooperative Housing Society at Amalner, and he is residing with his other family members has not been framed by the Trial Court.

8. It appears that Adhoc District Judge-1, Amalner, passed order below (Exh. 1) in Civil Appeal NO. 15 of 2004, thereby framed the issue i.e. "Whether plaintiffs prove that defendant has acquired residential house in Gurukul Kripa Cooperative Housing Society at Amalner and thus built/acquired vacant possession of a suitable residence?. The said issue, was referred to lower Court for Trial. The lower Court was permitted to record additional evidence, if required. The lower court was directed to try the issue referred and shall return the evidence, if any to Appellate Court together with its findings thereon and reasons therefor, within a period of three months. The parties were directed to remain present on 16th August, 2008. the record and proceedings were sent to lower Court.

On perusal of the records, it appears that said order dated 24th July, 2008 attained finality and same was not challenged by the defendant before Higher

Court.

The Joint Civil Judge, Junior Division, Amalner, after hearing the plaintiff as well as defendant, and after taking into consideration evidence brought on record answered additional issue in the affirmative, and Record and proceedings of the suit were sent back to Adhoc District Judge-1, Amalner along with original record in respect of the Judgment and Order dated 9th January, 2009 on additional issue to the Adhoc District Judge-1, Amalner.

9. It appears that the original defendant filed cross objection Under Order 41 Rule 26 of Civil Procedure Code, aggrieved by the Judgment and Order dated 9th January, 2009 passed by the Joint Civil Judge, Junior Division, Amalner on additional issue in Regular Civil Suit No. 159 of 1994.

10. The Adhoc District Judge-1, Amalner delivered the final Judgment and Order dated 11th August, 2009, by which Civil Appeal No. 14 of 2004 filed by the original defendant i.e. Revision applicant in Civil Revision Application No. 190 of 2009 came to be dismissed, and Civil Revision Application No. 15 of 2004 filed by the plaintiff came to be allowed. The Judgment and Order passed by the Joint Civil Judge, Junior Division, Amalner, in Regular Civil Suit No. 159 of 1994 was set aside and following order was passed:

The suit is hereby decreed.

The defendant is hereby directed to deliver the vacant possession of the suit premises as described in plaint para NO. 1 to the plaintiff within the period of two[2] months from the date of order.

The plaintiff is entitled for the mense profits from the date of the suit till handing over of the possession.

The cross objection filed by the defendant is hereby dismissed.

11. The Counsel appearing for the revision applicant i.e. Original defendant in Civil Revision Application No. 190 of 2009 submitted that the premise in Gurukul Sahakari Gruh Nirman Sanstha, Amalner cannot be said to be suitable alternate accommodation of the defendant. The said premise is insufficient for all the members who were and are residing in the suit premises as a tenant. Further, the Son of Narayan by name Prakash is residing separately in the premise in Gurukul Housing Cooperative Society, at Amalner. Thus, premises at Gurukul Co-operative Housing Society is not available to the defendant for his residence. It is further submitted that after earlier suit instituted by the plaintiff for eviction on the ground of bonafide requirement, the present suit, was not maintainable on the ground of bonafide requirement, in absence of any fresh cause of action. It is further submitted that admittedly, Jairam Marathe was the original tenant. On his death his heir i.e. Narayan as well as Anil both have inherited the tenancy rights of Jairam. Therefore, Anil was also a necessary party to the suit for eviction, when he was earlier and presently residing in the suit premises. The suit was instituted without adding him party, is suffers from non-joinder of necessary

parties. The second suit instituted by the plaintiff on the ground of, bonafide requirement was also barred. The learned Counsel invited my attention to the grounds taken in appeal memo and also written statement which was filed before the Courts below, and submitted that the Civil Revision Application deserves to be allowed.

12. The learned Counsel appearing for Revision applicant i.e. Ori. Plaintiff in Civil Revision Application No. 145 of 2009 invited my attention, to the grounds taken in the application and submitted that as per Section 13(1)(g) of the Act, the land-lord can recover possession of the premises for reasonable and bonafide requirement for occupation for himself or by any person for whose benefit the premises are held. The Learned Counsel, submitted that the applicant is retired from the service, and the present construction is not sufficient for him and his family members for residence as well as for occupation. The Courts below have failed to consider the reasonable and bonafide requirement, inspite of applicant pleaded details of his family members and has also, in evidence given details of the same. It is further submitted that the reasonable and bonafide requirement of the land-lord's family members, who are dependent on the land-lord for the purpose of residence or economic consideration can be considered. As the requirement of, land-lord and for the sake of setting the family members in business land-lord can seek eviction of tenant. The plaintiff has successfully led evidence, detailing the need and also how present premises in his possession is inadequate for his whole family which is ever increasing. Therefore, according to the Counsel appearing for the Ori. Plaintiff, eviction on reasonable and bonafide requirement, the Courts below should have allowed the suit of the plaintiff.

13. I have given due consideration to the arguments advanced by the learned Counsels appearing for the respective parties. I have also perused the Civil Revision Application along with its annexures and record and proceedings which are received from the lower Appellate Court.

14. The revision can be entertained by this Court, in a case no appeal lies from the decision of the subordinate Court, and if such subordinate Court appears to have exercise his jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. u/s 115 of the Civil Procedure Code, this Court cannot re-appreciate evidence and cannot, set aside the concurrent findings of the Courts below, by taking different view of the evidence. This Court, empowered to interfere with the findings of fact, if the findings are perverse or there has been a non appreciation or non consideration of the material evidence on record by the Courts below.

15. The principle grievance in Civil Revision Application No. 145 of 2009 filed by the original plaintiff appears to be that the reasonable and bonafide requirement of the plaintiff has not been properly appreciated, by the Courts below. It was the contention of the plaintiff that the suit premises is reasonable and bonafide requirement of the plaintiff, in view of the number of family members dependant

upon the plaintiff and also the plaintiff is retired from the service and the present construction /residence is not sufficient for him and his family members for residence, as well as occupation. In this respect Joint Civil Judge, Senior Division, Amalner, had framed the issue No. 2 and said issue, had been answered in the negative. The Trial Court, has considered the oral evidence adduce on behalf of the plaintiff. In para No. 12 of the Judgment, the Trial Court has referred evidence of plaintiff and his witness. The Court, has also referred to the documentary evidence at (Exh. 65 to Exh. 89). The Court has also considered, the other witness examined on behalf of the plaintiff. The Court has also referred to the evidence of defendant in same paragraph. In para No. 13 of the Judgment, the Court has also referred to Section 13(1)(g) of the Act. The Court has dealt with the contention of the plaintiff about his bonafide requirement of the suit premises in para No. 15. It was recorded in the said paragraph that the plaintiff's case is that he is residing along with his wife, two sons, a daughter-in-law and two grand sons since the year 1998. Thus, the constructed rooms are insufficient for their residence. The Court has further referred to the contentions of the plaintiff that the photo studio is in one room and customary washer business working is in another room and only in one room, all members of the family are residing. The Trial Court in para No. 21 has referred to the submissions of the defendant on the aspect of bonafide requirement of the suit premises of the plaintiff. The Court has referred to the relevant documentary proof and also to the Commissioner's report along with maps at (Exh. 139 and 203) and held, that this evidence is found in corroboration of defendant's submission. The Court has given detail findings about the Commissioner's report in said paragraph. The Court has also recorded the finding that the Studio business has not been running in suit premises, and both the sons of Plaintiff Nos. 1 and 2 are shifted at Pune. The Court has also referred to the cross-examination of the plaintiff in which he admits that one room out of constructed rooms was let out to the others by them. The Court, has also recorded in para No. 22 that 2/3rd portion which is in possession of the plaintiff is containing four rooms at suit premises as well as another property No. 81/2 available to them nearby the side of the suit premises. In para Nos. 28, 29 and 30 of the Judgment, the Court taking into consideration another property T.P. No. 81/2 at short distance as well as open space site available to plaintiff to meet their requirement of alleged construction of latrine etc. The Trial Court, held that the plaintiff failed to prove their reasonable bonafide requirement.

16. The plaintiff aggrieved by the findings of the Trial Court, preferred appeal. In appeal also in para No. 61 the Appellate Court held that the plaintiff has failed to prove that the suit premises are required for reasonable and bonafide requirement by the plaintiff for their occupation. In substance the Appellate Court, has confirmed the findings of the Trial Court, on the point of bonafide requirement of the suit premises. Therefore, there are concurrent findings of facts recorded by the Courts below, that the land-lord/plaintiff failed to prove that the suit premises are reasonably and bonafide requirement of the plaintiff

for their occupation. Both the Court have taken into consideration the adjoining property of the plaintiff, and also the house owned by his son at Pune. The Court, has also recorded the finding that the 2/3rd portion contains four rooms. Therefore, there are concurrent findings of facts in consonance with the evidence brought on record by the parties. I do not find, that the concurrent findings recorded by the Courts below are perverse. Therefore, Civil Revision Application No. 145 of 2009 filed by the original plaintiff's is devoid of any merits.

17. The Civil Revision application No. 190 of 2009 is filed by the Original defendant. The principle grievance which is raised, in this Civil Revision Application is about maintainability of Regular civil Suit No. 159 of 1994. According to the revision applicant, the original plaintiff did file Regular Civil Suit No. 104/1974 on the ground of bonafide requirement, and since the said suit was dismissed, the Regular Civil Suit No. 159/2004 being barred by the principle of res-judicata was not maintainable. In this respect, both the courts, have held against the Revision applicant / Ori. defendant. The Trial Court, has frame specific issue on this aspect i.e. issue No. 5(A) "Whether suit is barred by principle of res-judicata? same is answered in the negative. While answering the said issue. The Trial Court, has discussed this issue from para No. 35 onwards. The Trial Court, has referred to the Judgment of the Apex Court in a case of "Surajmal v. Radheshyam, reported in AIR 1988 SC" and more particularly para No. 8 of the Judgment, and also placed reliance on reported Judgment in the case of Mangharam Chuharmal Vs. B.C. Patel and Others, , and held ratio laid down in the said Judgments is squarely applicable in the facts of this case. Hon"ble Supreme Court in case of "Surajmal v. Radheshyam" cited supra has held thus:

Where a suit for eviction from premises comprising of shop on ground of bonafide need was dismissed, the second suit on the same ground would be competent. The bonafide need must be considered with reference to the time when a suit for eviction is filed and it can not be assumed that once the question of necessity is decided against the land-lord it has to be assumed that he will not have a bonafide and genuine necessity ever in future.

18. Therefore, in my opinion, looking to the facts of this case and more particularly, pleadings in the plaint that the defendant has constructed his own house and he is residing along with his family members, appears to be new pleading taken in Regular Suit No. 159 of 1994 by way of amending the plaint in the year 2004, and therefore, the suit was maintainable. The Appellate Court, has also held that the suit was not hit by principal of res-judicata. Therefore, there is no substance, in the contention raised by the Counsel for the original defendant that the Regular Civil Suit No. 159 of 1994 was hit by principles of res-judicata.

19. So far as framing of additional issue by the Appellate Court, and referring it to the Trial Court, for recording the finding on additional issue i.e. "Whether the plaintiff proves that the defendant has acquired residential house in Gurukul

Kripa Cooperative Housing Society at Amalner and thus build/acquired vacant possession of a suitable residence?" is concerned, the order dated 24th July, 2008 passed by the Adhoc District Judge-1, Amalner, referring this issue to the Trial Court, attained finality and same was not challenged by the defendant. Therefore, the Trial Court, after taking into consideration, the rival submissions answered the said issue in the affirmative. Therefore, there is no substance, in the contention of the Counsel appearing for the revision applicant / Ori. Defendant, that the Appellate Court, was not justified in referring additional issue to the Trial Court, for giving the findings and for recording additional evidence, if felt necessary. It is true, that after the additional issue was answered by the Trial Court, the Original defendants filed cross-objections before the Appellate Court, however, said cross-objections are negated by the lower Appellate Court.

20. Both the Courts have held that the defendant failed to prove that the suit of the plaintiff is false. The specific issue was framed in that respect and contention of the defendant, that the suit of the plaintiff is false has been negated by the Courts below.

21. The main ground, on which the Appellate Court set aside the decree passed by the Trial Court, is that the defendant is built/acquired house having necessary facilities and same is suitable for the residence, and further defendant has failed to produce positive evidence to show that the house has built/acquired by him is not suitable for his residence. The Trial Court, as well as Appellate Court held that the defendant has acquired/built vacant possession of suitable residence for himself and his family members at Gurukul Co-operative Housing Society at Amalner, and further held that plaintiff entitled for the relief of recovery of possession of suit premises.

22. The Trial Court while considering the additional issue referred by the Adhoc District Judge-1, Amalner, had given hearing to the parties, had also allowed them to led their evidence. The Trial Court, in para No. 10 has referred to the provisions of Section 13(1)(1) of the said Act. The said provision reads thus:

Section 13 - When landlord may recover possession:

(1) Notwithstanding anything contained in this Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a)

(L) That the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence.

The Trial Court, has referred to the documentary evidence, in para No. 13. The Trial Court, has referred to the notice sent to defendant (Exh. 228), extract of assessment of house of defendant (Exh. 79), voter's list(Exh.92), electric bill (Exh. 133) and also other documents. The Court, has also referred to the documents produced on behalf of the defendant i.e. voter's lists (Exh. 291, 292 and 391), letter of gas connection (Exh. 293), electric Bills (Exh. 295 to 298) etc.

The Court, has referred in para No. 14 to the affidavit of examination-in-chief. In examination-in-chief the plaintiff, contended that the defendant has purchased plot bearing T.P. No. 184/2 (A) of 1500 Sq. feet in Gurukul Graha Nirman Sahakari Sanstha, Amalner, in his own name and he has constructed the spacious house of three rooms consisting of toilet, bathroom, hall etc., and remaining plot is open. Defendant has constructed the house in the year 1988-89 and since 1990-1991, defendant and his family members are residing in the said house. The plaintiff has filed several documents showing that defendant having a plot bearing T.P. No. 184 in Gurukul Shahakari Society. In para No. 15 the Trial Court has observed that "it is pertinent to note here that defendant has admitted that he is having plot No. 14 in his name, as alleged by the plaintiff." (emphasis supplied)

23. The Trial Court, has further dealt with the contention of the defendant that though the said plot is in the name of the defendant, the defendant was never residing in the said house. However, the Court has referred in para No. 16, the death certificate of father of the defendant Jairam Marathe (Exh. 65). Perusal of death certificate (Exh. 65) shows that Jairam Marathe died in the year 1993 in the house at Gurukul Society which is his permanent address as mentioned in the certificate. In para No. 17, the Trial Court, has further referred to the voter's list at (Exh. 92) of assembly election in the year 1998 of election booth No. 151, Amalner, to show that defendant, his wife Vithabai, son Prakash and daughter-in-law Mirabai are residing in Gurukul Housing Society, and their names are included in voter's list of booth No. 151. The Trial Court, has observed that on perusal of the voter's list it transpires, that the name of defendant and his family members are appearing in both the voter's list, and further observed that voter's list cannot be taken into consideration. In para No. 18, the Trial Court, has referred electric bill of house of defendant at Gurukul Housing Society (Exh. 133), which shows that the electric connection is in the name of defendant. The defendant further placed on record (Exh. 295 to 298), to show that the electric bills of the suit house is in his name, and therefore, the Trial Court, has not taken into consideration the electric bills. In para No. 19, the Court has referred to the submissions of the plaintiff and commission report (Exh. 41). As per the report, the T.P. Plot No. 184/2(A) in Gurukul Housing Society, Amalner, is having area of 1500 Sq. ft., there is one hall, one kitchen, one store room, open space of 5.9x7.3 feet, toilet and bathroom in the said house, and remaining plot is open. In para No. 20 the Court has further considered the death certificate of wife of the defendant (Exh. 290) and recorded the submission that defendant wife Vithabai died in the suit house. However, the Trial Court, observed in para No. 20 that the defendant in his cross-examination has admitted that he had given information regarding death of his wife with Municipal Council for getting her death certificate. The Court has referred to the examination-in-chief of the defendant in para No. 21 and, as per original Written Statement of the defendant, he stated that his father died in the suit property and after death of his father, he along with his wife, wife of deceased Hari and wife children's of

Hari's sons Anil and Ramesh are residing in the suit property.

24. The Trial Court, has taken into consideration (Exh. 228) i.e. the acknowledgment of notice sent to the defendant on the address of Gurukul Housing Society at (Exh. 5), the summons of the suit received by the defendant sent on the address of Gurukul Housing Society. The (Exh. 84) brought on record, by the plaintiff i.e. receipt of money order of rent sent by defendant to the brother of plaintiff from the address of Gurukul Housing Society. Taking into consideration the evidence on record, the Trial Court, recorded the finding that "on perusal of all these documents it reveals that defendant is residing in Gurukul Housing Society since many years. He has also received summons of the suit and notice on the same address. Furthermore he himself has sent money order of rent from the said address. All these things goes to show that defendant is having his residence in Gurukul Housing Society. Though defendant has tried to bring on record evidence showing his residence of suit property. From the above it is clear that he is residing in Gurukul Housing Society." (emphasis supplied).

25. In para No. 23, the Trial Court, has referred to the "cross-examination of the defendant, in which he has admitted that he is having house in his name in Guaukul Housing Society and he is having electric connection and ration card on the same address and his name entered in the record of Municipal Council in the column of possessor", (emphasis supplied).

26. The Trial Court, has discussed the evidence of defendant's son Prakash who has stated in his evidence that since 1988, he along with his wife and three children's are residing in Gurukul Housing Society, and his parents and his uncle's family never residing in the Gurukul Housing Society. Further the plaintiff has brought on record the evidence, in the nature of voter's list of Assembly election of 1995 (Exh. 279), showing name of the defendant, his wife, his son and daughter-in-law. Taking into consideration, rival contentions and evidence on record adduced by the parties, the Trial Court, has answered the additional issue and held that, the plaintiff proved that defendant has acquired /built vacant possession of suitable residence for himself at Grukul Kripa Co-operative Housing Society.

27. The Appellate Court, has considered the additional issue in para No. 46 of its judgment. The Appellate Court, has observed that the defendant during his cross-examination has specifically, admitted about the house constructed at Gurukul Cooperative Housing Society, Amalner. The Appellate Court reproduced part of the cross-examination in vernacular language in the said para. On reading the portion of the cross-examination available in vernacular language in para No. 46, it clearly emerges, that the defendant has admitted that he is member of Gurukul Sahakari Grahanirman Housing Society, Amalner. This society has allotted plot to its members. The size of the plot is 3000 Sq. ft. It further appears, that the defendant has voluntarily made a statement, in the cross-examination that out of 3000 Sq. ft., each member has been allotted 1500 Sq. ft.

land. He has further admitted in his cross-examination, that he has constructed the house on the said plot, in the said society. It is further admitted, in his cross-examination that the electric connection in the newly constructed premise is in his name, even he holds ration card in which his name and his family members names are mentioned. In the said ration card the name of Gurukul Housing Society have also mentioned. Therefore, in para No. 47, the Appellate Court, recorded the finding that defendant is the member of Gurukul Co-operative Housing Society, Amalner, a plot allotted to the defendant, the defendant has constructed on the said plot and the defendant is residing in the said house along with his wife and children.

28. Therefore, on careful reading of the findings recorded by the Courts below. It clearly emerges, that the revision applicant i.e. original defendant is a member of Gurukul Co-operative Housing Society, Amalner, plot was allotted to the defendant, defendant has constructed the house on the said plot and the defendant is residing in the same house along with his wife and children. The concurrent findings of facts on this issue recorded by both the Courts below are absolutely in consonance with the evidence brought on record by the plaintiff. The said findings are recorded, taking into consideration the entire evidence on record by the plaintiff and defendant. When both the Courts below on facts concurrently held on this issue against the defendant and the applicant has utterly failed to prove any perversity in those findings, in my opinion, any interference in revisional jurisdiction is unwarranted.

29. The Appellate Court, has taken into consideration that the plaintiff has filed suit for the relief of recovery of possession of the suit property from the defendant, on the ground that defendant has acquired and build, vacant possession of suitable residence, and also on the ground of bonafide requirement of suit premises in para No. 65 of its Judgment. In my opinion, the Appellate Court, has rightly arrive to the conclusion that the evidence which has come on record is sufficient to fulfill the condition as laid down in Section 13(1)(L) of the said Act, that the defendant has acquired accommodation for himself and for his family members. The Appellate Court, has further recorded finding in para 50 of the Judgment that the defendant has never came with a case that the house at Gurukul Cooperative Housing society as constructed by him is not suitable for his residence and for residence of his family members. On the contrary, the defendant in his defense has constantly, contended that his son Prakash is residing in the house constructed at Gurukul Cooperative Housing society, Amalner along with his family. Therefore, the Appellate Court, taking into consideration the evidence on record, recorded the finding that the plaintiff has succeeded to prove that the defendant has acquired vacant possession of a suitable residence.

30. Taking into consideration, the arguments advanced on behalf of the learned Counsels for the respective parties, the findings recorded by the Courts below, the record and proceedings made available for perusal and other documents

brought on record by the parties, I am of the opinion that the Courts below have taken plausible view in consonance with the evidence brought on record by the parties, Both the Civil Revision Applications are rejected, interim relief if any stands vacated. Rule discharged accordingly. Record and proceedings be sent back to the concerned Court forthwith.

31. In view of the dismissal of the Civil Revision Applications pending, the Civil Applications if any are disposed of accordingly.