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Court : Mumbai Aurangabad

Decided On : Mar-11-2014

Judge : T.V. Nalawade

Appeal No. : Civil Revision Application No. 46 of 2014

Appellant : Nana and Others

Respondent : Prabhakar

Judgement :

1) This proceeding is filed against the judgment and decree of Rent Suit No.8 of 2007 and Rent Appeal No.2 of 2012. The suit filed by the respondent, landlord, for eviction is decided in his favour by the trial court and that decision is confirmed by the District Court. Both sides are heard.

2) The suit was filed in respect of portion admeasuring 16 ft x 7 ft. and 6 ft x 5 ft. from the house property bearing No.4-4-13 situated at Mohalla Kumbharwada, Aurangabad. It is the case of the plaintiff that he is owner of the southern side portion of the house having size of 20 x 20 ft and he got this portion in family partition with his sons. The plaintiff has given hand sketch map of the portion belonging to him. He has also shown the portion which is in possession of the defendant.

3) It is the case of the plaintiff that the suit property was given to the present appellants/defendant on monthly rent of Rs.131/- for running Tradle Printing Press.

It is contended that in view of development in the technology of printing, the defendant is not getting business and he is virtually not using the premises as Printing Press. It is contended that the defendant has given the suit premises on sub let basis to third party. It is the case of the plaintiff that the defendant owns house having 360 square meters size situated at Fakirwadi and it is three storeyed building. It is contended that on the ground floor of this building there are two shop premises where the defendant can shift his printing press.

4) It is the case of the plaintiff that he and his wife have become old and they have no source of income for livelihood. It is his case that his son had died prior to the date of suit and he is required to maintain his wife and families of two deceased sons. It is contended that the plaintiff intends to start some business in the suit premises for earning livelihood. It is his case that as the suit premises is situated in commercial area it is suitable for doing business of ready made garments for ladies. It is contended that he had asked the defendant to vacate the premises but the defendant has refused to do so. It is contended that in view of aforesaid circumstances no hardship will be caused to the defendant if decree of eviction is given against him, but hardship will be caused to the plaintiff if possession is not given to him.

5) The defendant has contended that the plaintiff has come with false case of partition for getting decree of eviction. It is contended that entire property CTS No.4354 belongs to the plaintiff. It is contended that area of house is around 157.8 square meters. It is contended that the house property of the plaintiff has frontage from two sides like North and south. It is contended that, the shutters of the shops are on northern side and there he can start business. It is contended that the other shops are given on rent basis to other tenants by the plaintiff.

6) It is the case of the defendant that since the year 1971-72 he has been in possession of the suit premises and he is doing business of printing. He has contended that he is in possession of more area than the area shown by the plaintiff and it is around 200 square feet. It is denied that the technology which he is using for printing press has become outdated and he is not getting any business. It is his case that he prints cinema tickets, marriage invitation cards etc.

by using this machinery. It is his case that he is required to maintain 15 to 16 members of his family and they are living on the income of this business.

7) It is the case of the defendant that he owns house No.4-7-21 but the property was purchased in 1980 and it is used only for residential purposes. It is contended that this property is situated in slum area and it is not suitable for business of printing press. He has contended that the plaintiff has become old, he is getting pension and he cannot do anything like business.

8) The trial Court has held that the plaintiff has proved the case of bona fide requirement of the suit property for starting business. The trial Court has held that the plaintiff has proved that greater hardship will be caused to the plaintiff if decree of eviction is not given to the plaintiff. The findings of the trial Court are confirmed by the District Court.

9) The learned counsel for the tenant submitted that the so called partition document used by the plaintiff cannot be considered in evidence as it was not registered. He submitted that the document shows that under this document partition was effected. He placed reliance on a case reported as AIR 1988 Delhi 13 (Chanderwati v. Laxmi Chand). In his case the Delhi High Court has observed that, when document effecting partition needs to be registered under section 17(1)(b) of the Registration Act. It is observed that if the document is not registered it cannot be admitted in evidence. There cannot be dispute over this proposition.

10) The facts of the present case show that prior to date of suit one son of the plaintiff died and other son died after filing of the suit. The evidence shows that both the sons were married. They left behind their widows and issues. The plaintiff has given evidence that he is required to maintain his wife and families of both deceased sons.

11) It was submitted by the learned counsel for the tenant that events subsequent to the filing of the suit need to be considered by the Court. He submitted that as two sons are dead, the plaintiff can use the remaining portion of the building also even after considering the document of partition and so decree cannot given

against the present defendant. The learned counsel for the tenant submitted that in a suit like the present one the plaintiff is required to prove that there was bona fide requirement of the suit premises for personal use on the date of the suit and it continued till the end. On this point learned counsel has placed reliance on the following reported cases:-

(1) AIR 1975 SC 1409 (Pasupuleti Venkateswarlu v. The Motor and General Traders);

(2) AIR 1981 SC 1711 (Hasmat Rai v. Raghunath Prasad);

(3) AIR 1985 SC 207 (M/s. Variety Emporium v. V.R.M. Mohd Ibrahim Naina).

12) On the aforesaid point there is one more case reported as 2001(2) Mah. L.J. 581 (Gaya Prasad v. Pradip). In this case the Apex Court has observed that the crucial date for deciding the bona fides is the date of application made by landlord for eviction. It is observed that the subsequent events occurred, pendent lite could be relevant only if they are of such nature and dimension as to completely eclipse the need.

Similar observation are made by the Apex Court in a case reported as 2008(6) ALL MR(SC) 981 (Maganlal Jishanlal Godha v. Nanasaheb Udhavrao Godewar).

13) In view of the aforesaid position of law, the Court considering such matters needs to see whether the subsequent events are of such dimension and nature as to completely eclipse the need.

14) The examination-in-chief of the plaintiff is consistent with the aforesaid pleading. The evidence in examination-in-chief filed by the defendant is also as per the aforesaid pleading in the written statement. In the cross- examination the defendant has admitted that he owns a property at Fakirwadi and on the ground floor of that building there are two shop premises. He has admitted that the size of the two shops premises is bigger than the area of the suit premises. On the other hand, it is brought on the record in the evidence of the plaintiff that some construction in his house property was made after the year 2004 and new shops were brought in existence. The evidence however shows that shops were given on

rent basis prior to the date of the suit. The evidence also shows that the second son also died after the date of the suit and the evidence is given that the plaintiff is the only adult male member available for taking care of his wife and the families of his two deceased sons. The defendant has brought on record that in one suit filed for injunction in the year 2004 by the defendant the plaintiff had not taken the defence of partition of the house property. It can be said that the plaintiff was the owner of the entire house on record though he has contended that it is ancestral house property. The trial Court has also given finding that the plaintiff is owner of entire house No.4-4-13. Thus the case of the plaintiff that there was partition between himself and his issues cannot be considered in his favour. However, the aforesaid circumstances like the death of two sons and the liability of plaintiff to maintain all these dependents need to be kept in mind while ascertaining the requirement of the plaintiff. In view of these circumstances, this Court holds that it is not possible to draw inference that the need of the landlord has eclipsed due to subsequent events. On the contrary, it needs to be presumed that at present the plaintiff needs to make more income as there is no source of income for his family, the families of two sons and he is required to take care of families of his two deceased sons. In this background the case of the plaintiff that he wants to start business in the suit premises needs to be considered. As the other shop premises which are 3 to 4 in number, were already given on rent basis prior to the date of suit, that circumstance cannot come in the way of the plaintiff to claim possession of the suit premises.

15) The evidence shows that, in view of the nature of business of the defendant he does not need to have the premises on main road and he does not need to have the space which can be used as show room. The evidence of the defendant shows that he is having 600 to 700 sq. feet area in his own building on ground floor. It can be said that, he has more than sufficient space in his own building where he can shift the printing press. When the plaintiff has come with specific case that due to old technology used by the defendant for printing press, he is not getting business, the defendant has not given evidence to prove that he is getting business and he is running the business profitably in the suit premises. The trial Court has made observation with regard to the nature of evidence given by the defendant in this regard and finding is given against the defendant. Further, the defendant has not

given evidence to the effect that after making demand by the plaintiff of the suit premises he started searching for other suitable premises.

16) The provision of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 gives a ground for eviction of the tenant. This provision reads as under:-

œ16. When landlord may recover possession: (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court satisfied -

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or ... .?

Section 16(2) of the Act says something about burden of proof and it runs as under :--

œ(2) No decree for eviction shall be passed on the ground, specified in clause (g) of sub-section (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass. Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of part of the premises the court shall pass the decree in respect of such part only.

Explanation.-- For the purposes of clause (g) of sub-section (1), the expression 'landlord' shall not include a rent-farmer or rent-collector or estate-manager.?

17) The learned counsel for the petitioner has placed reliance on the case reported as 2013(3) Mh.L.J. 310 (Chetan Anand Shetty v. Indrajeet Chandrasen Shirole). In this case some cases of the Apex Court are considered and this Court has observed that the landlord can claim premises for starting some business even if he was not doing any business on the date of the suit.

18) In the case reported as 1999(2) Mh.L.J. 793 (Datttatraya v. Abdul) it is held by the Apex Court that absence of existence of business of landlord cannot led to inference of absence of bona fides of the landlord. It is observed by the Apex Court that Court may presume in appropriate case that landlord's requirement is bona fide and in such case Court may ask the tenant to show that need is not bona fide. In the facts of the present case this Court holds the present case is such where the tenant was required to show that need of the landlord is not bona fide and greater hardship will be caused to him if decree is given to the landlord. The wording of section 16(2) shows that burden in this regard was on tenant.

19) In the case of 2003(4) Mh.L.J. 226 (Dwarka Prasad v. Niranjan) the Apex Court has laid down that normally rent legislations are meant for the benefit of the tenant but the rent statutes contain exception in favour of the landlord, which give him a right to evict the tenant. It is observed that if some grounds are given in statute then landlord can get decree of eviction if such grounds exist. It is observed that such grounds need to be extended for including requirement of members of family of the landlord. Thus when landlord dies, his widow and issue can prosecute the proceeding for eviction and the Court cannot presume that bona fide need lapsed due to death of landlord. In the present case though there was no specific pleading that his sons required the premises the landlords need of the premises has increased due to the death of his remaining son. This circumstance needs to be considered by the Court.

20) The case of the tenant that the landlord can use the other shop premises cannot be considered against the landlord. In the case reported as (2003) 1 SCC 462 (Akhileshwar Kumar v. Mustaqim) the Apex Court has laid down that the landlord has the right to decide which is suitable premises for the business which he wants to start. In the present case there is positive evidence to show that the premises in possession of the defendant is suitable for starting business mentioned in the pleadings by the landlord.

21) For determination of hardship, most important factor is whether reasonable accommodation is available for landlord or tenant. This Court has already observed that the tenant has his own premises acquired in 1980 and there he can

shift his business. It is also observed that the suit premises is suitable to the landlord for starting the business which he intends to start. So, on this ground also the tenant has failed. In the case reported as 2009 (4) Mh.L.J. 131 (Chotumal Bahiramal Sindho v. Baburao Vinayak Mohadkar) it is observed that in such a case tenant should lead evidence to show that after making demand of premises by the landlord, the tenant has attempted to find out alternative premises. No such evidence is given by the tenant and further alternative accommodation is available with the tenant. Though for consideration of hardship, other factors like financial position can also be considered, when alternative premises is available that factor is most important factor in such a case. In such case the factor of financial position need not be compared. However, there is no specific evidence to prove that the landlord is better placed.

22) The aforesaid discussion shows that the tenant has failed to prove that greater hardship will be caused to him if decree of eviction is given against him. There is concurrent finding of the two Courts below on both the points i.e. bona fide requirement and greater hardship. Entire material is considered by both the Courts. This Court has already observed that even if document of partition is ignored, things do not change and decision cannot be given in favour of the tenant. Thus, there is no material illegality or irregularity in the decisions given by both Courts below and no interference is warranted. On this point learned counsel for the landlord placed reliance on the case reported as AIR 1973 SC 76 (Managing Director, (MIG), Hindustan Aeronautics Ltd. v. Ajit Prasad Tarway).

23) In the result, the civil revision application is dismissed. Learned counsel for the tenant requested for time to vacate the suit premises. So time of six week is given to the tenant to vacate the suit premises.

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