



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.326 OF 2022

Subhadra Laxman Jadhav
deceased through her legal heirs-
Rajendra Laxman Jadhav
(since deceased through his legal
heirs)-

1(a) Chitrali Rajendra Jadhav and Ors.

...Applicants

V/s.

Mrs. Vandana Sanjay Kale

...Respondent

Mr. Sandeep Pathak *for the Applicants.*

Mr. Prashant Darandale *with Mr. Bajrang M. Solanke for the
Respondent.*

CORAM: SANDEEP V. MARNE, J.

Judgment Reserved on: 2 APRIL 2026.

Judgment pronounced on: 8 APRIL 2026.

JUDGMENT:

1) The Applicants have invoked revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**the Code**) for assailing the judgment and decree dated 7 December 2021 passed by the District Court, Pune, dismissing Regular Civil Appeal No.746 of 2016 and confirming the eviction decree dated 29 July 2016 passed by the Small Causes Court in Civil Suit No.225 of 2008. The Trial and the

Appellate Courts have concurrently upheld the ground of *bonafide* requirement of Plaintiff for directing eviction of the Applicants/Defendants. Additionally, both the Courts have concurrently ordered eviction of the Defendants /Applicants on the ground of denial of title of the Plaintiff by the Defendants.

2) A structure comprising of three rooms with a mezzanine floor and open space towards the west together with a shed admeasuring 8 x 8 sq.ft. in the open space and a bathroom, situated at CTS No.693 (old), C.T.S. No.596-B(new), Nana Peth, Pune are the '**suit premises**'. Plaintiff- Mrs. Vandana Sanjay Kale claims ownership in respect of the suit premises. Mr. Yashwant Ganpat Jadhav was initially inducted as tenant in respect of the suit premises. After his death, his wife and two sons Laxman and Chandrakant resided in the suit premises. Tenant's wife also passed away. Thereafter Laxman, his wife-Subhadra, sons - Rajendra, Jitendra, Ravindra, Balasaheb as well as Chandrakant and his wife resided in the suit premises. After death of Laxman and Chandrakant, Subhadra and her four children as well as Suman (wife of Chandrakant) were residing in the suit premises. Plaintiff claims to have purchased the property bearing CTS No.693(old) and 596B(new) vide Sale Deed dated 26 June 2006. According to the Plaintiff, she issued notice of attornment to the Defendants calling them upon to choose a name for issuance of rent receipts. That notice was accepted by Defendant No.4-Ravindra Laxman Jadhav. The Plaintiff demanded possession of the suit premises alongwith arrears of rent on 28 September 2007. According to the Plaintiff, Defendants had paid rent to the previous owner till 30 September 1981 and were in arrears of rent

thereafter. Plaintiff filed Civil Suit No.225 of 2008 in the Court of Small Causes, Pune, for *bonafide* requirement of her family contending that there were 8 to 10 members in the family. The Plaintiff also alleged unauthorised additions and alterations in the suit premises. The Plaintiff accordingly sought eviction of the Defendants from the suit premises. The suit was resisted by the Defendants by filing common written statement. In the written statement, Defendants questioned the title of the Plaintiff in respect of the suit premises contending that they were not aware about purchase thereof by the Plaintiff. The Defendants called upon the Plaintiff to prove acquisition of ownership of the suit premises.

3) The Trial Court proceeded to frame issues based on the pleadings. Plaintiff's husband-Sanjay Kale was examined as witness on behalf of the Plaintiff. On behalf of the Applicants/Defendants, Rajendra (Defendant No.2), Jitendra (Defendant No.3) and three other witnesses viz., Subhash Baban Gaikwad, Vinod Shashikant Pawar and Subhash Jaywant Kale were examined. After consideration of pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit by its judgment and order dated 29 July 2016. The Trial Court rejected the ground of default in payment of rent. However, it accepted the ground of *bonafide* requirement and also held that greater hardship would be caused to the Plaintiff by denial of decree of eviction. The Trial Court also held that the Plaintiff was entitled to recover possession of suit premises on account of Defendants denying her title. The Trial Court accordingly directed the Defendants to handover possession of the suit premises to the Plaintiff within a period of three

months. The Trial Court further directed conduct of enquiry into *mesne* profit under Order XX Rule 12 (c) of the Code.

4) Defendants /Applicants filed Regular Civil Appeal No.746 of 2016 before District Court, Pune, challenging the eviction decree dated 29 July 2016. During pendency of the Appeal, the Appellate Court stayed the eviction decree by directing the Applicants to deposit monthly compensation @ Rs.3,000/- per month from the date of decree vide order dated 7 November 2016. The Appellate Court has dismissed the appeal by judgment and order dated 7 December 2021 by upholding the eviction decree on both grounds of *bonafide* requirement as well as denial of Plaintiff's title by the Defendants. Aggrieved by the concurrent decrees passed by the Trial and the Appellate Courts, the Applicants initially filed Writ Petition, which was permitted to be converted into Civil Revision Application. By order dated 18 April 2022, this Court recorded statement made on behalf of the Respondent -Plaintiff that the execution proceedings would not be proceeded with. The said statement is continued from time to time. The Revision Application is called out for final disposal with the consent of the learned counsel appearing for the parties.

5) Mr. Pathak, the learned counsel appearing for the Applicants submits that the Trial and the Appellate Courts have grossly erred in decreeing the Plaintiff's Suit. That there is no oral evidence on behalf of the Plaintiff, who did not examine herself. That testimony of her husband is required to be ignored and discarded. That since the Plaintiff did not prove the case herself, the Suit ought to have been dismissed.

He further submits that the Plaintiff suppressed ownership and possession of several premises by her. He submits that she has three alternate premises, out of which two premises are kept locked and unused and one is rented out. That the Plaintiff did not approach the Court with clean hands. He relies on judgment of this Court in *Tarachand Hassaram Shamdasani V/s. Durgashankar G. Shroff & Others*¹ in support of his contention that it is the duty of the Plaintiff to disclose in the pleading and evidence ownership of all premises. That in the present case, Plaintiff failed to discharge the said duty and that therefore her suit ought to have been dismissed.

6) Mr. Pathak further submits that the Plaintiff can make use of the three properties in her possession and came out with false requirement of suit premises. That Defendants' family consists of 14 members belonging to different generations, who reside in the suit premises. That the Defendants are daily wage workers, who would suffer more comparative hardship than the Plaintiff. That the Trial Court failed to frame an issue relating to comparative hardship, which is a mandatory requirement under Section 16(2) when the eviction is sought under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (**the MRC Act**). That the Trial and the Appellate Courts have erred in holding that comparative hardship needs to be discussed only when plea in that regard is raised by tenant in the written statement. That such plea was indeed raised by the Defendants in the written statement. That Defendants admittedly do not have any alternate premises, and that

¹ 2004(Supp.) Bom C.R.333

therefore decree for eviction could not have been passed on the ground of Plaintiff's *bonafide* requirement.

7) So far as the issue of denial of Plaintiff's title by the Defendants is concerned, Mr. Pathak submits that the act was *bonafide* as the Defendants never received any notice of acquisition of ownership in respect of the suit premises by the Plaintiff. That the Plaintiff did not prove service of notice of attornment of tenancy. That mere property card cannot be a document of title. That for proving valid service of notice upon the Defendants, Plaintiff ought to have examined the postman, who allegedly effected the service. That failure to lead evidence of postman goes to the root of the matter resulting into non-service of notice on Defendants. In support, he relies on judgment of this Court in *Shelatkar Construction Pvt. Ltd. & Anr. V/s. Creative Enterprises & Anr.*² He further submits that Maharashtra Rent Control Act, does not recognise denial of title as a ground for recovery of possession from the tenant, and in support he relies on judgment of Delhi High Court in *Lalit Dutt Sharma V/s. Lokesh Jasoria*³. That in any case, mere denial of title by the tenant does not automatically result in eviction when questioning the title was a *bonafide* act of a tenant. He relies on judgment of the Apex Court in *Dr. Ranbir Singh V/s. Asharfi Lal*⁴. On above broad submissions, Mr. Pathak would pray for setting aside the impugned eviction decree.

2 2008(1) Bom.C.R.(Cri.) 191

3 2018 SCC OnLine Del 10083

4 (1995) 6 SCC 580

8) The Revision is opposed by Mr. Darandale, the learned counsel appearing for the Plaintiff. He submits that the concurrent findings of fact are recorded by the Trial and the Appellate Courts, which do not warrant interference in revisionary jurisdiction of this Court. That the Plaintiff has proved, by leading cogent evidence, residence by 8 to 10 persons in Plaintiff's family in the suit premises. That Plaintiff does not own or possess any alternate premises capable of being put for residence. That the Trial Court has rightly appreciated that no residential premises are available for the Plaintiff or her family members. That the Defendant cannot dictate terms to the Plaintiff-landlady. That the *bonafide* need is genuine and concurrently upheld by both the Courts.

9) Mr. Darandale further submits that the Defendants had full knowledge of acquisition of ownership in respect of the suit premises by the Plaintiff. That the admission to that effect is given in cross-examination by Defendants' witness-Jitendra. Similarly, Defendant-Rajendra admitted during his evidence that he had received notices dated 18 January 1996 as well as 28 August 2007. That the document of title was produced alongwith the Plaintiff and Defendants still chose to question title of the Plaintiff in respect of the suit premises. That such an act clearly fits into the provisions of Section 116 of the Indian Evidence Act, 1872. He submits that the concurrent findings by the Trial and the Appellate Courts on the issue of *bonafide* requirement and denial of title are based on evidence warranting no interference by this Court. In support, he has relied on judgment of the Apex Court in S. Thangappan V/s. P. Padmavathy⁵ and of this Court in Narendra

5 (1999) 7 SCC 474

Vyankatesh Tambat V/s. Pravinkumar Khushalchand Tated⁶. He prays for dismissal of the Revision Application.

10) Rival contentions urged on behalf of the parties now fall for my consideration.

11) The Plaintiff has acquired ownership in respect of the suit premises vide Sale Deed dated 26 June 2006. She instituted Suit for eviction of the Defendants on grounds of default in payment of rent, *bonafide* requirement and unauthorised additions and alternations in the suit premises. In their written statement, Defendants feigned ignorance about Plaintiff acquiring ownership in respect of the suit premises. Defendants questioned title of the Plaintiff in respect of the suit premises and denied existence of landlord-tenant relationship. Therefore, the Trial Court framed additional issues relating to Plaintiff's entitlement to recover possession on account of denial of her title by the Defendants as well as jurisdiction of Small Causes Court to try and entertain the Suit. At the end of the trial, the Trial Court has rejected the grounds of default in payment of rent and erection of structure of permanent nature. Only the ground of *bonafide* requirement came to be accepted by the Trial Court. Additionally, the Trial Court also upheld Plaintiff's entitlement to recover possession of the suit premises on account of denial of title by the Defendants. The findings of the Trial Court on issues of *bonafide* requirement and Defendants' denial of title of the Plaintiff are concurrently upheld by the Appellate Court.

6 2016(l) Mh.L.J. 215

12) So far as the ground of *bonafide* requirement is concerned, the Plaintiff pleaded the case of 8 to 10 persons residing in three room flat in her possession. Plaintiff pleaded in paragraph 3 of the Plaint as under:-

वादी यांना स्वतःच्या राहण्याकरीता स्वतंत्र अशी जागा नाही. वादी हे मोल मजुरी करणारे असून, त्यांचे पोट हातावरचे आहे. वादी ज्याठिकाणी सध्या रहात आहे, तो एक ३ रूमचा फ्लॉट असून, त्या ठिकाणी वादी, तिचे पती, दोन मोठी मुले, वादीची सासु व वादीचा दिर, त्याची पत्नी व त्याची एक मुलगी असे ८ ते १० माणसे वादीच्या कुटूंबात असून, सदरची जागा वाढीस अत्यंत अपुरी पडत आहे. वादीचा मुलगा हा दहावी इयत्तेत असून, त्यास अभ्यासासाठी जागा नाही. पुढे त्यास त्याच्या शिक्षणासाठी अभ्यासासाठी जागा उपलब्ध नाही. वादीचा दुसरा मुलगा शिक्षण घेत असून त्यासही अभ्यासासाठी जागा नाही. तसेच वादीच्या कुटूंबात वरील माणसे असल्याने वादीस प्रायव्हसी (एकांतपणा) भेटत नाही. वादीच्या कुटूंबात वादीचे, तिच्या सासुचे, दिराचे व भावजयीचे पटत नाही, त्यामुळे रोजच्या रोज भांडणे होत आहेत. त्यामुळे वादीच्या, तिच्या मुलांच्या पतीच्या मनःस्थितीवर अनिष्ट परिणाम होत आहे. वादीच्या मुलांना अभ्यासासाठी इतरांकडे जावे लागते. तर नवऱ्यास दिवसभर जागेच्या कमतरतेमुळे बाहेरच रहावे लागते. वादीस ते रहात असलेल्या फ्लॉटमध्ये स्वतंत्र स्वयंपाक करावा लागतो आणि वादीच्या कुटूंबात असलेल्या कलहामुळे स्वयंपाकही एका ठिकाणी करता येत नाही. वादीस तिच्या स्वतःच्या कुटूंबास शांतपणे बसून दोन घास खाताही येत नाही. पाण्यावरून भांडणे, बाथरूम वापरण्यावरून भांडणे, वीजेच्या बीला वरून भांडणे, तर वादीस साधा टीव्हीचाही उपभोग घेता येत नाही. वादी व तिच्या कुटूंबाची प्रचंड कुचंबना जागेच्या कमतरते अभावी होत असून, दावा मिळकत ही त्यांची स्वतःची मालकी असल्याने त्या दावा मिळकतीत राहणे व स्वतःच्या वापरासाठी उपयोग करणे गैर नसून, त्या मुद्यावरील कायदाही वादीच्या बाजूने आहे. प्रतिवादी हे भाडेकरी असून, वादीने स्वतःच्या जागेच्या उपभोग न घेता किती दिवस अडचणीत काढावयाचे याचा निष्कर्ष न्यायालयानेच काढावा. सबब वादीस दावा मिळकतीची अत्यंत आवश्यकता व निकड आहे. वादी रहात असलेला फ्लॉट हा दावुसकर यांच्या मालकीचा असून, त्यांनीसुद्धा वादीच्या मागे सदरचा फ्लॉट परत देण्याविषयी वारंवार मागणी व तगादा लावला आहे, त्यांना वादी रहात असलेला फ्लॉट परत हवा असून, ते सुद्धा त्याठिकाणी रहावयास येण्याच्या विचारात आहे. एकंदरीत वादीस तिचा न्यायीक हक्क म्हणून दावा मिळकतीचा कब्जा मिळणे गरजेचे आहे. तसेच दावा मिळकतीचा ताबा वादीस दिल्यास प्रतिवादींना कसलाही त्रास होणार नाही, उलट वादीस ताबा न मिळाल्यास वादीच्या कुटूंबाची सर्वांग दृष्टीकोणातून वाताहत होईल.

13) Plaintiff's children were taking education at the time of filing of the Suit. By the time the Suit was decided in the year 2016, the Plaintiff's children had grown up adding to the difficulties in accommodating them in the premises in her possession. Thus, Plaintiff was able to prove her *bonafide* requirement in respect of her suit premises. It is well settled position that Defendant cannot dictate terms or question the need of the Plaintiff. So long as the need is not a mere fanciful desire, the Court needs to accept genuineness of need expressed by the Plaintiff. After all the landlady is the owner of tenanted premises and Defendant/tenant cannot contend that the Plaintiff must adjust in available premises or secure additional premises for accommodating her family members. In the present case, Plaintiff's *bonafide* requirement is clearly established and findings recorded by the Trial and the Appellate Courts do not suffer from the vice of perversity.

14) It is contended on behalf of the Applicants that the Plaintiff did not approach the court with clean hands and suppressed ownership and possession of several properties by her. Reliance is placed on judgment of this Court in ***Tarachand Hassaram Shamdasani*** (supra) in which the learned Single Judge of this Court has held in paragraph 8 as under:

8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be *bona fide* and reasonable.

15) No doubt, the Plaintiff has duty to disclose all the premises owned and possession of all the premises. However, such disclosure is required only in respect of the properties, which are capable of being utilised for the requirement pressed into service. If requirement is for residence of family members, it becomes incumbent for the Plaintiff to disclose all properties in her/his possession/ownership, which can be put to use for residence. In present case, after scrutiny of entire evidence on record, the Trial and the Appellate Courts concurrently held that Defendants could not establish ownership or possession of any suitable alternate residential premises by the Plaintiff. Mere possession of commercial premises or agricultural land is of no avail nor there is any duty cast on the Plaintiff to make disclosures in respect of the ownership or possession of agricultural land or commercial premises. In my view, therefore, the findings recorded by the Trial and the Appellate courts on the issue of non-availability of alternate suitable residential premises do not warrant any interference in exercise of revisionary jurisdiction of this Court.

16) I am not inclined to accept the contention raised on behalf of the Applicants that the Trial Court has not conducted any enquiry into the aspect of comparative hardship. Perusal of the findings recorded in paragraph 38 of the judgment of the Trial Court would clearly indicate conduct of enquiry into the issue of comparative hardship. Paragraph 38 reads thus:

३८ दावा मिळकतीची वादीला व तिच्या कुटुंबाला गरज असून दावा मिळकतीचा ताबा वादीला दिल्यास प्रतिवादीचे नुकसान होणार नाही असे वादीचे म्हणणे आहे. प्रतिवादीच्या कुटुंबात व्यक्ती राहत असल्यामुळे दावा मंजूर केल्यास प्रतिवादीचे नुकसान होईल, असे प्रतिवादीचे म्हणणे आहे.

It therefore cannot be contended that the Trial Court's judgment is silent on the aspect of comparative hardship. After recording the above finding, the Trial Court has considered the entire evidence on record and has thereafter upheld the ground of *bonafide* requirement. The Appellate Court framed a specific Issue No. 4 on comparative hardship and has answered the same against the Defendants. The Appellate Court has taken into consideration Plaintiff's averment that Defendant Nos. 3 and 4 do not reside in the suit premises and the factum of they not filing the written statement denying the plea. Therefore Applicants' contention that the issue of comparative hardship is not decided is misconceived.

17) Coming to the issue of Defendants denying Plaintiff's title, in my view, the Defendants have incurred a disqualification from holding onto the tenanted premises by venturing into act of denial of Plaintiff's title in respect of the suit premises. This was done by the Defendants essentially for opposing the ground of non-payment of rent. Otherwise, there was no need for Defendants to question Plaintiff's title in respect of the suit premises. Section 116 of the Indian Evidence Act debars a tenant from denying title of the landlord in respect of the tenanted premises. Such denial results into forfeiture of tenancy. The Defendants' defence of absence of knowledge about Plaintiff securing title is proved to be false. Defendant's witness-Jitendra has given an express admission during the course of his cross-examination in which he has stated that 'वादीच्या नावाची नोंद झालेले व दाव्यात दाखल केलेले मालमत्ता पत्रक मी पहिले आहे.' Furthermore, before institution of the Suit

the Plaintiff had served notices dated 18 January 1996 and 28 August 2007. Defendant's witness- Rajendra has admitted that notice dated 28 August 2007 was received by him. Therefore, Defendants alleged ignorance about acquisition of ownership in the suit premises by the Plaintiff is clearly found to be false. Most importantly, Plaintiff filed documents of ownership alongwith the Plaint. The written statement was filed by the Defendants after having full opportunity of going through the documents filed alongwith the Plaint. Despite this position, Defendants took a calculated risk of denying Plaintiff's title in respect of the suit premises.

18) Mr. Pathak's contention that denial of title is not a ground specified in MRC Act for eviction cannot be countenanced. There is specific estoppel under Section 116 of the Evidence Act against a tenant from denying title of the landlord in respect of the tenanted premises. The judgment of the Delhi High Court in *Lalit Dutt Sharma* (supra) is rendered in peculiar facts of that case which cannot be cited in support of abstract principle that tenant can never incur forfeiture of tenancy despite denying landlord's title to the suit premises. Mr. Darandale's reliance on judgment of the Apex Court in *S. Thangappan* (supra) in this regard is apposite. In connection with Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 the Apex Court had held denial of Plaintiff's title by the tenant to be a fit ground for eviction of the tenant. This Court in *Narendra Vyankatesh Tambat* (supra) has held that tenant incurs forfeiture of tenancy upon repudiation of relationship with the landlord.

19) In the present case, it cannot be contended by any stretch of imagination that Plaintiff's denial of title by the Defendants was *bonafide* in any manner. It was clearly mischievous act aimed at justifying non-payment of rent. The Defendants had fully acquired knowledge of Plaintiff becoming owner of the suit premises. The Defendants had not paid rent in respect of the suit premises since the year 1981. The Defendants took benefit of provisions of Section 15(3) of the MRC Act and deposited rent of Rs.21,740/- in the Court to avoid decree of eviction. However, before doing so, they deliberately questioned title of the Plaintiff with a view to justify their act of non-payment of rent to the Plaintiff. In such circumstances, the Defendants' act of denial of title of the Plaintiff cannot be termed as *bonafide* in any manner and their reliance on judgment in *Dr. Ranbir Singh* (supra) is inapposite. Mr. Pathak has relied on *Shelatkar Construction Pvt. Ltd.* (supra) in support of his contention that examination of postman is necessary for proving service of notice. In the present case, Defendants' witness-Rajendra has admitted receipt of notice dated 28 August 2007. Therefore, it was not necessary to lead any additional evidence to prove service of notice.

20) Considering the overall conspectus of the case, this Court is not inclined to interfere in the concurrent findings recorded by the Trial and the Appellate Courts on the issues of *bonafide* requirement and denial of landlady's title by the Defendants. Pendency of the proceedings for the last 18 long years has assisted the Defendants in occupying the suit premises. Time has come for the Defendants to give

up the possession of the suit premises, which are owned by the Plaintiff, and who genuinely needs the same.

21) Civil Revision Application is accordingly **dismissed**. Considering the facts and circumstances of the case, I deem it appropriate not to impose any costs on the Applicants.

[SANDEEP V. MARNE, J.]

22) After the judgment is pronounced, the learned counsel appearing for the Applicants prays for continuation of stay granted by this Court for a period of six weeks. Accordingly, the interim order granted by this Court on 18 April 2022 shall continue to operate for a period of six weeks.

[SANDEEP V. MARNE, J.]