



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

CIVIL REVISION APPLICATION NO. 795/2011

**YESHWANT PANDURANG WORLIKAR
(SINCE DECEASED) THROUGH LEGAL HEIRS
AND LEGAL REPRESENTATIVES ..APPLICANTS
VS
SHANKAR MAHADEV PATIL AND ORS ..RESPONDENTS**

Adv. Ziaul Mustafa i/b. Adv. Milind Vilas Rawal for the applicant.
Adv. A. M. Saraogi for the respondents.

**CORAM : RAJESH S. PATIL, J.
RESERVED ON : 7 MARCH 2026
PRONOUNCED ON : 18 MARCH 2026.**

JUDGMENT :

1) This civil revision application filed u/s. 115 of the Code of the Civil Procedure by the applicant who is the landlord of the suit premises, challenges the judgment and decree passed by the Appellate Bench of the Small Causes Court whereby the decree of eviction passed by the trial Court was set aside. Though the ground of *bonafide* requirement was answered in favour of the landlord, only on the ground of non-joinder of one of the legal heirs of the tenant, the suit was dismissed by the Appellate Bench of the Small Causes Court.



2) The applicant being landlord of the suit premises filed a suit for eviction on three grounds viz. (i) *bonafide* requirement, (ii) sublet and (iii) arrears of rent. The trial Court decreed the suit premises on the ground of *bonafide* requirement and sublet. The Appellate Court held the ground of subletting against the landlord, however, answered the ground of *bonafide* requirement in favour of the landlord, but on the ground of non-joinder of one of legal heirs of the tenant by the landlord the decree was refused. Hence, the present civil revision application by the landlord.

3) Therefore, in the present proceeding, the landlord would have to cross the hurdle whether it was necessary to the landlord to add the daughter of the original tenant in the eviction suit.

4) Mr. Mustafa, learned counsel appearing for the applicant-landlord submitted that law as far as impleadment of heirs of the deceased tenant is quite settled by the judgments passed by the Supreme Court in the case of *Suresh Kumar Kohli vs. Rakesh Jain and another*¹. He further submitted that in the additional written statement filed by defendant no.3, it is very categorically stated that it is only defendant no.3 alongwith defendant no.2, who is in possession of the suit premises. Similarly, in the evidence of

¹ (2018) 6 SCC 708



defendant no.3, he has again repeated the said fact that it was only defendant no.2 who was in possession of the suit premises. There is no mention that the sister of the defendants was ever in possession of the suit premises, neither it is clarified that what is the name of the sister of the defendants and her other details whether she is married and is staying with her husband in her matrimonial house. He further submitted that the trial Court had decreed the suit which was accepted by all the defendants except defendant no.3 (Shankar Mahadev Patil). The appeal was preferred before the Appellate Bench of the Small Causes Court only by defendant no.3 (Shankar Mahadev Patil). Therefore the civil revision application requires to be allowed.

5) Mr. Saraogi, learned counsel appearing for the respondents-defendants submits that it is not the plaintiff's case that only the defendants are residing in the suit premises and the sister of the defendants is not residing in the suit premises. He further submitted that the landlord was aware about the details of the sister of the defendants. Therefore, only on the ground of non-joinder of the necessary party, the suit has been rightly dismissed by the Appellate Bench of the Small Causes Court. He submits that judgment referred by Mr. Mustafa are on the issue of after the death of the tenant for convenience the rent receipts should be in the name of one of the



legal heirs of the original tenant. Therefore, the judgments referred by the applicant – landlord would have no bearing in the present proceedings.

6) I have heard counsel for both the sides and with their help, I have gone through the documents on record.

7) The Supreme Court in the judgment of *Suresh Kumar Kohli* (supra), while dealing with the issue of impleadment of the legal heirs of the deceased tenant as party in the eviction proceeding has held that any of the legal heirs who is in occupation of the suit premises, can be impleaded as a party and all of them need not be impleaded. It further held that the issue about non impleadment of one of the legal heirs at the stage of execution is nothing but an attempt to nullify the eviction decree. Paragraph 24 of the said judgment reads as under:-

24. We are of the view that in the light of *H.C. Pandey (1989) 3 SCC 77*, the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenants is occupation of all the joint tenants. It is not necessary for the landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of the deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenants is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legat heirs. Thus, the plea of the tenants on this count must fail.

(Emphasis supplied)



8) Therefore, the Supreme Court has categorically held that it is not necessary that in every proceeding the landlord will be aware about the names of all the legal heirs of the deceased tenant.

9) In the present proceeding, the defendants could have while raising issue about non impleadment of the sister of the defendants as a party in the proceeding, in its written statement, put on record the details of said sister (a) whether she is residing in suit premises and (b) whether she is married and if married, when did she leave the suit premises. None of these details have been given by the defendants.

10) The ratio of the Supreme Court judgment in the case of *Suresh Kumar Kohli* (supra), is squarely applicable to the present proceeding. Therefore, the landlord has crossed over the hurdle, that being non impleadment of the legal heirs of the deceased tenant as party defendant. So also, the fact remains that it is the defendants themselves in their written statement and in evidence have stated that only defendant no.2 is in occupation of the suit premises.

Paragraph 2 of the additional written statement reads as under:-

2. With reference to the additional paragraph 2-A of the amended plaint the Defendant No.3 further submits that the Defendant No.1 is not residing in the suit premises since about the year 1964. The original Defendant No.2 was staying in the suit premises alongwith the Plaintiff till his death. During the life time of the Defendant No.2 he alone was staying



alongwith the Defendant No.3 and the Defendants No. 2 (a) to 2 (c) were not residing in the suit premises and they separated from the original Defendant No.2 in or about the year 1965 and started staying separately somewhere else. Even the Defendants No.2 (a) to 2 (c) were not personally served at the suit premises and only the notice of the Hon'ble Court was pasted on the door of the suit premises by the bailiff of this Hon'ble Court. The Defendant No.3 further submits that the Plaintiff is also staying in the same locality viz. Worli Koliwada and he was very much aware of the death of the original Defendant No.2 in or about the year 1983. In spite of the said knowledge, the Plaintiff did not take any steps to bring the Defendants No.2 (a) to 2 (c) on record. The Plaintiff is also very much aware of the fact that the Defendants No.2 (a) to 2 (c) are not staying in the suit premises. The Defendant No.3 therefore, denies that on the death of original Defendant No.2 the cause of action in present suit survives as alleged and further denies that the alleged cause is available to the Plaintiff as against the Defendants No.2 (a) to 2 (c) The Defendant No.3 further denies that the tenancy in respect of the suit premises has been terminated as alleged by the Plaintiff.

11) Similarly, in the cross-examination of defendant no.3 (Shankar Mahadev Patil), has categorically stated that “defendant no.1 left the suit premises in 1965. At present, he is residing in another premises in Worli Koliwada. The defendant no.2 expired in the suit premises in 1983. Prior to his death, he alone was residing in the suit premises. At the time of death of defendant no.2, his wife and children were residing at parental house of the wife of the defendant no.2 since 1963.

12) Hence, in my view, considering the pleadings and evidence on record, non-joinder of sister, if any, of the defendants will not be fatal to the suit premises.

13) As regards the three grounds for eviction, learned counsel for



the applicant – landlord, on instructions, has given away the ground of arrears of rent as there was no much material available with him and as the trial Court had dismissed the suit on the ground of arrears of rent and the landlord having not file any cross objections or cross appeal before the Appellate Bench.

14) As regards the ground of *bonafide* requirement, in the plaint, it is the case of the landlord that there are six members in the family of landlord. The landlord himself is a blind person, and they all are staying in premises nearby which is a tenanted premises admeasuring 6 ft. x 8 ft. which totals to 48 sq.ft. In the evidence on behalf of the landlord again the said fact has been categorically stated. The defendants have admitted that the present suit premises is 570 sq.ft. However, they have disputed that the plaintiff is residing in a premises admeasuring 48 sq.ft. According to them, the plaintiff is residing in the area of 150 sq.ft. Since the landlord is blind, on behalf of the landlord he examined his wife as PW-1. So also, he examined one more witness who was examined for the purpose of ground of eviction of subletting.

15) The Supreme Court in the judgment of *Meenal Eknath Kshirsagar (Mrs) versus Traders & Agencies and another*², there are

² (1996) 5 SCC 344



identical facts where the landlords were residing in the tenanted premises, and she had sought eviction of the tenant in the suit premises. The Supreme Court while setting aside the findings of the Bombay High Court and of the Appellate Court of the Small Causes, decreed the suit of the landlord and confirmed the findings given by the trial Court. Paragraph No.13 reads as under:-

13. In *Prativa Devi Vs. T. V. Krishnan*³, to which our attention has been drawn by the learned counsel for the appellant, this Court has pointed out the correct test which has to be applied in finding out whether the requirement of the landlord is bona fide or not. It has held that:

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.

..... There is no law which deprives the landlord of the beneficial enjoyment of his property.”

16) This judgment is squarely applicable to the facts of the present case. In the evidence itself the defendants have stated that it is only defendant no.2 who is in occupation of the suit premises which is admeasuring 570 sq.ft., the plaintiff’s family consists of six members when they have filed the suit. Nothing material were brought on record on behalf of the defendants to show that there are other premises available with the landlord where their need can be satisfied. In an application being Interim Notice No. 134/1994 filed before the trial Court by the plaintiff to bring on record the legal

³ (1996) 5 SCC 353



heirs of the deceased defendant no.2, the defendant no.3 (Shankar Mahadev Patil) filed his reply which is part of the compilation produced before this Court at page 157. In paragraph 3, it has been stated that “defendant no.1 is not residing in the suit premises since about 1964. Defendant no.2 till his death was staying in the suit premises. The plaintiff is staying in the same locality was very much aware of the death of defendant no.2 which happened in or about 1983. Even then after much delay the application to bring on record the legal heirs of defendant no.2 has been preferred. According to me, this is a clear admission on the part of the defendants that apart from defendant no.1 earlier and thereafter, defendant no.2, nobody resided in the suit premises. According to me, the findings of the trial Court as regards the *bonafide* requirement is concerned, needs to be confirmed which was also confirmed by the Appellate Court.

17) Hence, the suit is decreed for eviction on the ground of *bonafide* requirement.

18) There is one more ground which was sought i.e. subletting which was answered in favour of the landlord. However, the Appellate Court reversed the same. Since, I have already passed the decree of eviction on the ground of *bonafide* requirement, hence I am



not dealing with the ground of subletting, however, I would like to mention that as far as subletting is concerned, the plaintiff has rightly made submissions in the plaint which is required in law in paragraph 3 that the defendants have subdivided the suit premises into two parts, upper part has been sublet unauthorizedly and the defendants are recovering rent from the sub-tenant and profiteering therewith since the defendant is receiving a rent of Rs.125/- per month and rent of the suit premises which the defendants are supposed to pay to the plaintiff is only Rs.15 per month. The said fact has been repeated by the plaintiff in her evidence, so also, the sub-tenant has mentioned the said fact in his evidence. In fact, an agreement entered into between the defendant and sub-tenant has been brought on record. Much has been said about the signatures on the said document as regards the comparison of the signatures of the defendant on the said document and on the vakalatnama.

19) Mr. Saraogi also raised an issue about identification of the premises being not prepared.

20) I have seen paragraph 1 of the plaint which refers to House no.70, situated near Shankar Temple, Worli Koliwada, Worli,Mumbai 400 025. The said description is also repeated in prayer clause (a) of



the plaint. Therefore, according to me, the description of the suit premises is in a proper format and the decree can be accordingly executed.

21) In view of the fact that I have already held that there is an eviction decree passed by both the Courts on *bonafide* requirement the same is confirmed.

22) The civil revision application, hence, stands **allowed**.

23) In view of the same, the impugned judgment and decree passed by the trial Court on 10/2/1998 in R.A.E. Suit No.862/1979 stands confirmed.

(Rajesh S. Patil, J.)

24) At this stage, Mr. Saraogi, learned advocate appearing for the respondents seeks time of six months to vacate the suit premises.

25) Mr. Milind Rawal, learned advocate appearing for the applicants has opposed the request made by Mr. Saraogi.

26) The respondents are granted six months time from today to vacate the suit premises subject to they filing an usual undertaking of all the adult members of the respondents' family also stating therein that they are the only persons who are in possession of the suit



premises, and they will not create any third party rights and would not part with possession, and they will vacate the suit premises within a period of six months from today.

27) Stay to the execution of this judgment is granted subject to undertakings be filed within a period of one week from today.

(Rajesh S. Patil, J.)