Civil judgment no. 5

Judgment in a suit for recovery of possession, arrears of rent and mesne profit

Presented on - 01/10/2017

Registered on - 02/10/2017

Decided on -. 18/08/2017

Duration - 02 09 17

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IN THE COURT OF THE CIVIL JUDGE JUNIOR DIVISION SOLAPUR, AT SOLAPUR

(Presided over by Shri. M. N. O.)

R.C.S. No. – 24/2017

Exhibit no. – 100

Mr. X.. Y.. Z..

Age – 43 years,

Occ. – Private job, - Plaintiff

R/o., - 34, Samarth Nagar,

Solapur.

V/s

Mr. A.. B.. C..

Age – 45 years,

Occ. – laborer - Defendant

R/o., - 67, Bale,

Solapur

Advocate's Appearances –

1. Shri P.Q.R. – Learned Advocate for Plaintiff.

2. Shri L.M.N. – Learned Advocate for Defendant.

JUDGMENT

(Delivered on 18th August, 2020)

1. The plaintiff has filed a suit against the defendant for recovery of possession, arrears of rent and mesne profit against the defendant.
2. The plaintiff has examined himself at exh. No. 40, Plaintiff has also examined PW2 Shanker at exh. No. 60. The plaintiff has filed following documents in support of his case –
   a. City survey extract of C.T.S. no. 101 at exh. No. 6

b. Ration card of plaintiff's family at exh. No. 42

The defendant has examined himself at exh. No. 62 and has not filed any documentary evidence in support of his case.

3. Considering the matters before the court it is clear that, the defendant has admitted that he is the monthly tenant of plaintiff landlord in suit property.

4. The plaintiff's case in short is as under –

The plaintiff is the owner of the suit property situated at C.T.S. no. 101, Municipal No. 52, Navi peth, Solapur. The defendant is in possession of the suit property since 20 years paying monthly rent of Rs.500/- (in words five hundred rupees only). The tenancy month of defendant starts from 1st day of every month and ends on the last day of the month, according to English calendar. The monthly rent of Rs.500/- is the standard rent of suit premises. Recently the marriage of two sons of the plaintiff took place and therefore now the family members of the plaintiff are increased. The plaintiff is in possession of only 1BHK flat and now plaintiff requires more premises bonafidly and reasonably for his personal use and occupation of his family. The defendant is in possession of another 2BHK

flat at 60, Hotgi road, Solapur along with suit property. The defendant has alternate accommodation to occupy the family members. The plaintiff will suffer a great and irreparable loss if possession of the suit property is not decreed on the other hand, as there is alternative accommodation, the defendant will not suffer any hardship. The plaintiff has also claimed arrears of rent of Rs.2,000/- (in words two thousand rupees only) along with mesne profit.

5. The case of the defendant is as under

The defendant appeared and filed his W.S. at exh. No. 12. The contention of the defendant is that Rs.1,000/- per month is the standard rent of the suit premise. The plaintiff does not require the possession of suit premise bonafidly and reasonably for the occupation his family members. The plaintiff is a big landlord having number of premises in the city of Solapur. The 2 BHK flat of 60, Hotgi road, Solapur was purchased by the brother of the defendant and defendant has no concerned with the said flat. The defendant has paid the entire rent of the suit property at a rate of Rs.500/- per month in the court. The plaintiff from time to time increased the

rent from Rs.100/- to Rs.500/- and demanded Rs.1000/- per month four month before filing of suit. The defendant refused to pay rent of Rs.1000/- per month, hence the plaintiff has filed this false suit against the defendant and prayed for dismissal of the suit.

6. From the pleading of both the parties I have framed issues at exh. No. 21. My findings on said issues with reasons are as follows –

Sr. No	**Issues**	**Findings**
1.	Whether plaintiff proves that he requires suit premise bonafidly and reasonably for his personal use and occupation ?	Yes
2.	To whom the greater hardship was caused, if the suit is decreed ?	To plaintiff
3.	What is the standard rent of the suit premise ?	Rs.500/- P.M.
4.	Whether the plaintiff has entitled to the possession of the suit property ?	Yes
5.	Whether plaintiff is entitled to Rs.2000/- as claimed ?	Yes

6.	Whether plaintiff is entitled to mesne profit of the suit premise ?	Yes
7.	What order and decree ?	As per final order

REASONS

As to issue no. 1

7. In order to establish his claim the plaintiff has examined himself at exh. No. 40 and PW2 shankar at exh. 60. The plaintiff deposed that due to marriage of his two sons, his family members are now increased. Plaintiff is in possession of only 1BHK flat. The remaining property owned by the plaintiff are in possession of tenants. As the family of the plaintiff increased the plaintiff require the possession of the suit premise bonafidly and reasonably for the occupation of his family members. The ration card produced by the plaintiff at exh. No. 42 show that now the family member of the plaintiff has increased from four to eight i.e. plaintiff, his wife, two sons, two daughter-in-laws and two grandsons. According to authority submitted by advocate of the plaintiff Mah. Law Journal 1997 page 127, the famous Meenal

Kshirsagar's case the S.C. held that the landlord is the best judge of his requirement and the court cannot dictate how to use his own premises. Therefore I am of the opinion that the plaintiff has proved his bonafide and reasonable requirement, hence I answer issue no. 1 in affirmative.

As to issue no. 2

8. The PW2 Shankar, the neighborhood of the defendant residing at 61, Hotgi road, Solapur deposed that the defendant and his family members are now residing at 60, Hotgi road, Solapur in 2 BHK flat. The suit premise is not in use by the defendant. The plaintiff has deposed that all the properties were tenanted and he is in possession of only 1 BHK flat and it is insufficient for the family members of the plaintiff considering the Ration card and evidence on record I am of the opinion that the greater hardship will be caused to the plaintiff if the decree for possession is not passed and as there is alternative accommodation to the defendant, no hardship will be caused to the defendant. Hence I answer the issue no. 2 accordingly.

As to issue no. 3

9. The defendant admitted in his W.S. that he is paying Rs.500/- per month as a rent since 2001. There is no evidence produced by the defendant that the suit premise was let to him at a rent of Rs.100/- per month. Considering the market rate in the said locality I am of the opinion that Rs.500/- per month is the standard rent of the suit premise. Hence I answer issue no. 3 accordingly.

As to issue no. 4

10. As I am of the opinion that the plaintiff requires suit premise reasonably and bonafidly for his personal use and occupation and greater hardship will be caused to the plaintiff if decree for possession is refused. I am of the opinion that the plaintiff is entitled to the possession of suit property. Hence I answer issue no. 4 in affirmative.

As to issue no. 5

11. As the defendant admitted in his W.S. that four month before filing of the suit the plaintiff demanded Rs.1000/- per month as a rent and the defendant refused to pay Rs.1000/- per month and not paid the rent of four month therefore the plaintiff is entitled to Rs.2000/- as an arrears of rent of four months. Hence I answer issue no. 5 in affirmative.

As to issue no. 6

12. As I am of the opinion that the plaintiff is entitled to the possession of suit property, the plaintiff is also entitled to mesne profit from the date of filing of the suit till recovery of possession. Hence I answer issue no. 6 in affirmative. Hence I pass the following order –

ORDER

1. The suit of the plaintiff is decreed with cost.
2. Defendant is directed to deliver the possession of suit premise to the plaintiff within two months.
3. The plaintiff is entitled to Rs.2000/- from the defendant.
4. The plaintiff is entitled to mesne profit from the date of filing of suit till the recovery of possession. The inquiry for mesne profit be held in accordance with Order 20 rule 12(3) of C.P.C.
5. Decree be drawn up accordingly.

(Dictated and pronounced in open court)

Place : Solapur **Sd/-**

Date : 18/08/2020 **Civil Judge Junior Division**

Solapur