Supreme Court of India
Smt. Savitrabai Bhausaheb Kevate ... vs Raichand Dhanraj Lunja on 15 December, 1998
Bench: S.Saghir Ahmad, M. Jagannadha Rao.

PETITIONER:
SMT. SAVITRABAI BHAUSAHEB KEVATE AND OTHERS

Vs.

RESPONDENT:
RAICHAND DHANRAJ LUNJA

DATE OF JUDGMENT: 15/12/1998

BENCH:
S.SAGHIR AHMAD, & M. JAGANNADHA RAO.

JUDGMENT:

M.JAGANNADHA RAO Leave granted.

This appeal is directed against the judgment of the High Court of Bombay in Writ Petition 3714 of 1982 dated 17.04.1997. By that judgment the learned Single Judge set aside the judgment of the 2nd Addl. Small Causes Court, Pune in Civil Suit No. 1285 of 1979 dated 02.12.1981 as affirmed by the District Court, Pune in Civil Appeal No. 266 of 1982 dated 20.10.1982. The trial court had decreed the suit filed by the appellants for eviction of the respondent on the ground of bona fide requirement and the said judgment was affirmed by the District Court. These two judgments were set aside by the High Court under Article 227 of the Constitution of India. It is this judgment of the High Court that is challenged in this appeal.

We shall refer to the facts briefly: .....L...I.....T.....T.....T.....T.....T..J The suit premises consist of a shop bearing No.4 on the ground floor of a house at Pune. The shop was let out by the predecessor in-title of the appellants, Sri Kevate to the respondent on a monthly rent of Rs. 75/- for running a grocery shop. The said Kevate wrote a letter to the respondent on 8.3.1978 that the respondent had closed the shop for more than a year, and that he was not using the same for the purpose for which it was let out. Later, Shri Kevate sent a registered notice on 27.3.1979 terminating the tenancy w.e.f. 01.04.1979 and asking the respondent to vacate the shop. As respondent failed to vacate the shop, the said Shri Kevate filed the present Civil Suit before the Small Causes Court, Pune under Section 13(1)(g) and (k) of Bombay Rents, Hotel and Lodging House, rates Control Act, 1947 (hereinafter called the Act). According to him the shop was is necessary for his son Madhukar to start business. During the pendency of the suit, Shri Kevate expired and the appellants, including the said Madhukar came on record as plaintiffs, being his legal heirs. The parties led oral and documentary evidence in the trial court. The learned trial Judge by judgment dated 2.12.1981 held that the appellant failed to prove that the shop was closed continuously for more than 6 months prior to the filing of the suit and hence the claim under Section 13(1) (k) was liable to be rejected.

However, in regard to the claim for bona fide requirement under Section 13(1)(g), the learned trial Judge held that the requirement of the plaintiff, namely for his son Madhukar to start a business, was a bona fide one. It was also held that the hardship to the appellant's son Madhukar was more than the hardship to the respondent- tenant. The eviction suit was decreed. On appeal, the learned District Judge confirmed the said judgment holding that since the family was already in business, there was no question of the appellant's son Madhukar not having the necessary experience and capital for running business. The learned District Judge also held that the respondent had another shop in Ganesh Peth which was flourshing and, therefore, no hardship would be caused to the respondent if a decree for eviction was passed. When the respondent moved the High Court under article 227 of the Constitution of India, the learned Single Judge of the High Court allowed the writ petition holding that there was no material on record showing as to why the landlord did not occupy a particular shop of his which had fallen vacant in the year 1976. According to the High Court, the landlord's son Madhukar could have started his business in that shop in 1976 if there was really a bona fide need. Inasmuch as the said shop which fell vacant in 1976 was not occupied by the landlord's son Madhukar, the High Court came to the conclusion that the need of the landlord was not bona fide. Accordingly, the judgments of both the lower courts were set aside and the eviction suit was dismissed.

In this appeal, learned counsel for the landlord -appellant contended that the High Court ought not have reversed the finding of fact arrived by the lower courts which finding was based on evidence. It was also argued that the High Court erred in thinking that Madhukar, the landlord's son could have occupied the shop vacated by a barber in 1976 inasmuch as Madhukar was still in college in 1976 and was not ready to start any business.

On the other hand, learned counsel for the respondent contended that the landlord ought to have occupied the shop vacated by the barber in 1976 and made his son Madhukar to start his business there. According to learned counsel, the conclusion arrived at by the High Court was consistent with the evidence.

The point for consideration is: whether the High Court erred in reversing the concurrent findings of fact of both the lower courts and in holding that the landlord did not bona fide require the shop?

From the above facts, it is clear that both the courts have arrived at concurrent findings of fact regarding the bona fide need of the landlord, namely, to enable his son Madhukar to start a business. The High Court has reversed the said finding on the salutary ground that the landlord has not occupied the shop vacated by the tenant, namely a barber, in 1976 which he could have given to his son Madhukar to start business.

In our view, the High Court was wrong in its assumption that Madhukar could have started a business in 1976 for the following reasons. Number of witnesses were examined on behalf of the landlord whose evidence was accepted by the trail court and the first appellate court. But the most important part of the evidence which the High Court omitted to consider was the following statetment of Madhukar:

"Why my father did not retain the premises let out to the barber, I cannot say. It is a fact that my father was requiring the suit premises, as I did not complete education at that time."

From the above evidence of the landlord's son Madhukar it is clear that by 1976 the said Madhukar had not completed his education and was not ripe enough to start a business. It was only in 1979 that the said Madhukar completed his education, and the landlord thought of making Madhukar to start a business in the suit shop and gave a notice for eviction and filed the present suit in 1979. Therefore, it is clear that the assumption of the High Court that the landlord could have given the shop which fell vacant in 1976 to his son Madhkur is the contrary to the evidence placed on record.

The above evidence of the landlord's son Madhukar was the reason for the trial court ordering eviction. This is what the trial court stated.

"By the time the suit came to be filed by the deceased, the plaintiff-Madhukar had not taken B.A. degree."

This was affirmed by the appellate court. The High Court erred in setting aside the concurrent findings of both courts.

For the aforesaid reasons the judgment of the High Court cannot be sustained. We accordingly set aside the same and restore the judgment of the trial court as affirmed by the appellate court.

The appeal is accordingly allowed.

The learned counsel for the respondent- tenant, however, submitted that some time may be granted to respondent to vacate the premises. We accordingly grant time up to 30th June, 1999 for the respondent to vacate the suit shop subject to the condition that the respondent files an undertaking in this Court within 2 weeks from today. If the said undertaking is not filed within the said period of 2 weeks or in the event the conditions mentioned in the said undertaking are committed breach of, the order granting time up to 30th June, 1999 shall stand recalled and the appellant will be entitled to execute the decree of the trial court as affirmed by the appellate court.