

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 541 OF 2018
WITH
INTERIM APPLICATION NO. 2892 OF 2026**

Hirabai Hiranman Wadkar and Ors ... Applicants

vs.

Balkrishna Nathoba Shitole(since deceased) ... Respondent

Mr. S.M. Gorwadkar, Senior Advocate, Mr. Niranjana A. Mogre a/w.
Mr. Umang Mehta a/w. Mr. Swaraj M. Savant a/w. Mr. Varun H.
Thanawala a/w. Mr. Soham S. Lande for the Applicants.

Digitally
signed by
VARSHA
VIJAY
RAJGURU
Date:
2026.04.22
13:17:53
+0530

CORAM : GAURI GODSE, J.

DATED : 15th APRIL 2026

ORDER:

1. This civil revision application is filed by the original defendants to challenge the trial court's judgment and decree allowing the suit filed by respondent no. 1 under Section 6 of the Specific Relief Act. During the pendency of the suit, respondent no.1, i.e. the original plaintiff, expired, and his heirs and legal representatives were brought on record. Admittedly, the original plaintiff was the tenant of the suit property. The revision applicants are the landlords.

2. Learned senior counsel for the applicants submits that, admittedly, the plaintiff had acquired an alternate accommodation and had shifted to that flat, which is apparent from the admissions given in the evidence. He submits that after acquiring alternate accommodation, the original plaintiff has surrendered the suit property. Thereafter, he also stopped paying rent. The applicants, accordingly, inducted another tenant who is in possession of the suit property and regularly pays rent. He submits that all these facts support the applicants' contention that the plaintiff had surrendered the suit property and shifted to his own premises. He therefore submits that when the plaintiff was not in possession of the suit property, and he failed to establish that he continued in possession after he acquired alternate accommodation, there would not be any question of illegal possession as contended by the plaintiff.

3. Learned senior counsel for the applicants further submits that the remedy under Section 6 is a personal remedy for the person who has been allegedly dispossessed. Hence, after the death of the original plaintiff, his heirs and legal representatives would have no right to sue these revision applicants for a decree of possession under Section 6 of the Specific Relief Act. He submits that the heirs and legal representatives of the plaintiff never applied at any time

for any kind of declaration that they have any right in respect of the suit property. Hence, the impugned order would require interference of this court.

4. I have perused the papers of the civil revision application. It is not in dispute that the plaintiff was the tenant of the revision applicants. It appears that there is also no dispute that the original plaintiff had acquired some accommodation. The revision applicants have claimed that the original plaintiff had surrendered the tenancy and handed over the possession. However, this pleading is not supported by any evidence. The issue of non-payment of rent or the tenant's acquisition of alternative accommodation can at the most be a ground for the landlord to seek the tenant's eviction. However, the same would not ipso facto mean that the tenant would hand over possession to the landlord. The issue regarding the other person who is inducted into the premises would also be irrelevant to deciding the original plaintiff's grievance of illegal dispossession. Therefore, for deciding the prayer for possession under Section 6 of the Specific Relief Act, the only criterion to be examined is the plaintiff's prior possession.

5. In the present case, the plaintiff's tenancy is not in dispute. The defence appears to be a surrender of the tenancy and a

handing over of possession, which is not supported by any evidence. As far as the rights of heirs and legal representatives of the plaintiff to continue the suit under Section 6 of the Specific Reliefs Act is concerned, the heirs and legal representatives claiming through the original tenant would be entitled to sue for illegal dispossession of the original plaintiff. The heirs and legal representatives are brought on record, and their relationship with the original plaintiff is not in dispute. Hence, in the present case, the right to sue would continue to the heirs and legal representatives, who continued with the pleadings alleging that they were illegally dispossessed by the landlord. The trial court has therefore rightly decreed the suit as the possession of the original plaintiff as tenant was not in dispute, and the defence of surrendering of tenancy and handing over possession was not proved by any evidence.

6. I therefore do not find any jurisdictional or any other manifest error in the reasons recorded in the impugned judgment and order, warranting any interference in the exercise of power under Section 115 of the Civil Procedure Code to interfere with it.

7. The civil revision application is therefore dismissed.

8. In view of the dismissal of the civil revision application, the

pending civil applications are disposed of as infructuous.

9. At this stage, learned senior counsel for the applicants seeks an extension of the interim protection granted by this court, which has been operating to date. The interim protection granted in the civil revision application shall continue to operate for a period of four weeks from the date of uploading this order on the website.

(GAURI GODSE, J.)