Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.389 OF 2023
WITH
INTERIM APPLICATION NO.12808 OF 2023
IN
SECOND APPEAL NO.389 OF 2023

Mr. Vasant Damu Khaire ...Appellant/ Applicant

V/s.

Mr. Shantaram Narayan Raut (deceased) through Legal Heirs
1. Smt. Yashoda Shantaram Raut & Ors. ...Respondents

WITH
SECOND APPEAL NO.315 OF 2023
WITH
INTERIM APPLICATION NO.4142 OF 2023
IN
SECOND APPEAL NO.315 OF 2023

Mr. Balasaheb Omkar Sarode ...Appellant/ Applicant

V/s.

Mr. Shantaram Narayan Raut (deceased) through Legal Heirs
1. Smt. Yashoda Shantaram Raut & Ors. ...Respondents

WITH
SECOND APPEAL NO.312 OF 2023
WITH
INTERIM APPLICATION NO.4133 OF 2023
IN
SECOND APPEAL NO.312 OF 2023

Mr. Mehboob Gulzarkhan Pathan (Deceased- through LR's.)
1A) Smt. Tamijbi Gulab Pathan (Since deceased) ...Appellants/ Applicants

1B) Smt. Shamin Mehboob Pathan & Ors.

V/s.

Mr. Shantaram Narayan Raut ...Respondents
(deceased) through Legal Heirs
1. Smt. Yashoda Shantaram Raut & Ors.

WITH
SECOND APPEAL NO.316 OF 2023
WITH
INTERIM APPLICATION NO.4143 OF 2023
IN
SECOND APPEAL NO.316 OF 2023

Mr. Sharifkha Alikha Pathan ...Appellant/
Applicant

V/s.

Mr. Shantaram Narayan Raut ...Respondents
(deceased) through Legal Heirs
1. Smt. Yashoda Shantaram Raut & Ors.

WITH
SECOND APPEAL NO.314 OF 2023
WITH
INTERIM APPLICATION NO.4139 OF 2023
IN
SECOND APPEAL NO.314 OF 2023

Mr. Prakash Laxman Kakad ...Appellant/
Applicant

V/s.

Mr. Shantaram Narayan Raut ...Respondents
(deceased) through Legal Heirs
1. Smt. Yashoda Shantaram Raut & Ors.

WITH
SECOND APPEAL NO.395 OF 2023
WITH
INTERIM APPLICATION NO.12872 OF 2023
IN

SECOND APPEAL NO.395 OF 2023

Mr. Ashraf Amirkhan Pathan ...Appellant/ Applicant

V/s.

Mr. Shantaram Narayan Raut (deceased) through Legal Heirs A. Smt. Yashoda Shantaram Raut & Ors. ...Respondents

WITH
SECOND APPEAL NO.392 OF 2023
WITH
INTERIM APPLICATION NO.12833 OF 2023
IN
SECOND APPEAL NO.392 OF 2023

Mr. Chandrakant Baburao Shewale Through POA Mr. Dnyaneshwar Chandrakant Shewale ...Appellant/ Applicant

V/s.

Mr. Shantaram Narayan Raut (deceased) through Legal Heirs 1A. Smt. Yashoda Shantaram Raut & Ors. ...Respondents

WITH
SECOND APPEAL NO.393 OF 2023
WITH
INTERIM APPLICATION NO.12834 OF 2023
IN
SECOND APPEAL NO.393 OF 2023

Mr. Sanjay Prabhakar Sali ...Appellant/ Applicant

V/s.

Mr. Shantaram Narayan Raut (deceased) through Legal Heirs A. Smt. Yashoda Shantaram Raut & Ors. ...Respondents

WITH

SECOND APPEAL NO.388 OF 2023
WITH
INTERIM APPLICATION NO.12804 OF 2023
IN
SECOND APPEAL NO.388 OF 2023

Mr. Deepak Prabhakar Hadke ...Appellant/ Applicant

V/s.

Mr. Shantaram Narayan Raut (deceased) through Legal Heirs 1A. Smt. Yashoda Shantaram Raut & Ors. ...Respondents

Ms. Smita Gaidhani, for the Appellant in SA/312/2023, SA/314/2023 & SA/395/2023 and for the Applicant in IA/4133/2023 in SA/312/2023, IA/4139/2023 in SA/314/2023 & IA/12872/2023 in SA/395/2023.

Mr. Narayan G. Rokade, for the Appellant in SA/389/2023, SA/315/2023, SA/316/2023, SA/392/2023, SA/393/2023 & SA/388/2023 and for the Applicant in IA/12808/2023 in SA/389/2023, IA/4142/2023 in SA/315/2023, IA/4143/2023 in SA/316/2023, IA/12833/2023 in SA/392/2023, IA/12834/2023 in SA/393/2023 & IA/12804/2023 in SA/388/2023.

Mr. Sagar Kasar a/w Satish Chettiyar, Chaitali Bhogle & Rachana Harpale for the Respondents in all the above Second Appeals and the Interim Applications.

CORAM : MADHAV J. JAMDAR, J.
DATED : JULY 11, 2023

P.C.:

1. Heard Ms. Gaidhani, learned counsel appearing for the Appellants in three Second Appeals i.e. Second Appeal No.312 of 2023, Second Appeal No.314 of 2023 and Second Appeal No.395 of 2023 and Mr. Rokade, learned counsel appearing for the Appellants in the remaining six Second Appeals i.e. Second

Appeal No.389 of 2023, Second Appeal No.315 of 2023, Second Appeal No.316 of 2023, Second Appeal No.392 of 2023, Second Appeal No.393 of 2023 and Second Appeal No.388 of 2023.

2. Ms. Gaidhani, learned counsel appearing for the Appellants in above mentioned three Second Appeals has raised following substantial questions of law :

(i) Whether the decree of eviction could have been passed as learned Trial Court has not framed the issue regarding description of the suit property although the contention in that regard is specifically raised in the written statements?

(ii) Whether the suit seeking recovery of rent beyond the period mentioned in the suit notice is maintainable?

(iii) Whether the suit notice is defective and therefore, decree of eviction passed is illegal?

(iv) Whether the learned Trial Court committed grave illegality and irregularity in not framing issue regarding contention that the previous owners have agreed to allot an alternate premises on an ownership basis and, therefore, eviction decree passed is illegal?

3. Ms. Gaidhani, learned counsel submits that during the pendency of the suits, the written statements filed in respective suits were amended and it has been brought on record that the concerned respective suit structures have been shifted

substantially and the same are only partly situated on the suit property. Therefore, it is her contention that decree of possession regarding suit premises cannot be granted. She pointed out contentions regarding suit notice dated 1st February 2011 set out in paragraph 4 of the plaint where, it is mentioned that the tenancy was terminated by notice dated 28th February 2011 and rent is not paid with effect from 7th April 2008 i.e. the date on which the Plaintiff has purchased the suit property till 30th November 2013 i.e. the period beyond the suit notice. She submitted that therefore, the suit seeking rent beyond termination notice itself is not maintainable and the said paragraph 4 clearly shows that even the suit notice itself is defective and, therefore, no decree should have been passed on the basis of the said notice. She submitted that in the plaint, a prayer is sought for Defendant to be directed to pay arrears of rent of Rs.3,748/- and the said rent is for the period from 8th April 2008 to 30th November 2013 and, therefore, the suit itself is not maintainable. She also pointed out paragraph 10 of the written statement of the Defendant stating that the original owner has agreed to allot an alternate premises on an ownership basis in the new building and submitted that no issue is framed with respect to said contention. It is her submission that, therefore, the decree of eviction passed by the learned Trial Court

and as confirmed by the learned Appellate Court is not sustainable.

4. Mr. Rokade, learned counsel appearing for the Appellants in the remaining six Second Appeals, raised following substantial questions of law. For the sake of convenience they are numbered as (v) to (viii) as Ms. Gaidhani, learned counsel appearing in three Second Appeals has raised four substantial questions of law as set out earlier.

(v) Whether the suit for possession is maintainable as the vendors of the Plaintiffs have handed over possession of the entire property purchased by the Plaintiffs?

(vi) Whether the suit filed on the basis of notice sent by the previous owners is maintainable?

(vii) Whether there exists a relationship of landlord-tenant between the parties?

(viii) Whether the suit is barred by law of limitation?

5. Mr. Rokade, learned counsel submitted that the Sale Deed dated 7th April 2008 in favour of the original Plaintiff makes no mention about the existence of the tenanted premises. He pointed out the recitals in the Sale Deed dated 7th April 2008 mentioning that possession of entire property which has been purchased by the original Plaintiff has been handed over to the original Plaintiff by his vendors. He submitted that therefore, in effect, as the possession of the suit premises is handed over, the suit for

possession is not maintainable. He pointed out notice dated 18th December 2010 issued by the vendors of the Plaintiff and submitted that previous owners have no right, title and interest to issue notice and, in any case, if, such notice is issued then, the previous owners remain the owners and, therefore, no right, title and interest has been transferred in favour of the Plaintiff. He submitted that no landlord-tenant relationship exists between the parties. He also submitted that the suit is barred by law of limitation.

6. Mr. Sagar Kasar, learned counsel appearing for the Respondent i.e. the original Plaintiff pointed out various aspects and supported the impugned Judgments and Decrees. He also pointed out the orders passed in other Second Appeals filed by other tenants of the said property against the Respondents and the same have either been dismissed or withdrawn. He submitted that there is no substantial question of law involved in these Second Appeals and, therefore, the same ought to be dismissed.

7. Before considering the substantial questions of law raised by both Ms. Gaidhani and Mr. Rokade, learned counsels appearing for the respective Appellants, it is necessary to set out the factual aspects as emerging from the record.

i] The property i.e. land admeasuring 0.27 R out of Gat No.626/2 situated at Village-Vinchur, Taluka-Niphad,

District-Nashik (hereinafter referred to as the **"said property"**) was purchased by Shri. Balasaheb Dhondu Sonawane, Shri. Ramesh Shankar Shelar and Shri. Shantaram Chandrabhan Ubale (hereinafter referred to as the **"First Purchasers"**) from the original owners Shri. Chandrakant Gopala Davare, Sau. Nanda Chandrakant Davare and Kum. Prachi Chandrakant Davare by registered Sale Deed dated 6th April 2004. The said Sale Deed records that entire possession of the said property admeasuring 0.27 R has been handed over to the First Purchasers.

ii] The First Purchasers sold the said property admeasuring 0.27 R to Shantaram Narayan Raut i.e. original Plaintiff (hereinafter referred to as the **"the Second Purchaser" or "original Plaintiff"** as the case may be) by registered Sale Deed dated 7th April 2008.

iii] First Purchasers served an Advocate's notice dated 18th December 2010 on all the Appellants, informing them that the Second Purchaser i.e. the Plaintiff has purchased the said property by registered Sale Deed dated 7th April 2008 and that the Appellants have not paid the rent after the Second Purchaser purchased the property by Sale Deed dated 7th April 2008 and,

therefore, it was informed to all the Appellants that with effect from 7th April 2008, the Plaintiff i.e. the Second Purchaser has become owner and landlord of the suit property.

iv] By Advocate's notice dated 1st February 2011 issued on behalf of the Second Purchaser i.e. the Plaintiff, it has been informed to the respective Appellants that the rent for the period from 7th April 2008 to 28th February 2011 is outstanding and out of the said outstanding rent, certain amount has been paid by money order by the respective Appellants and the remaining amount is outstanding. The details of the same are set out in the respective notices sent to the respective tenants i.e. respective Appellants. It is also set out in the said notices that *inter alia* the tenancy of the respective tenants i.e. the respective Appellants is terminated with effect from 15 days from the receipt of said notices.

v] On the basis of aforesaid suit notices around twelve suits were filed. These Second Appeals are concerning nine suits. As far as other three suits filed by some other tenants are concerned, the decree passed against them has attained finality up to the Second Appeals and the Respondents have received possession in those three

matters.

vi] It is also an admitted position that in the respective written statements filed by all the respective Appellants it is *inter alia* specifically contended that after the Appellants came to know that original Plaintiff is the owner of the suit property, they have paid some rent amount to the original Plaintiff. It is also an admitted position that most of the Appellants in their respective written statements have raised the contention that the original Plaintiff has accepted some payment for providing new premises in the new building. In some matters, a reference is made regarding receipt of the said payment. However, no such receipt is produced by any of the Appellants before the learned Trial Court.

8. In the above background, it is necessary to consider various substantial questions of law raised by Ms. Gaidhani and Mr. Rokade, the learned counsels appearing for the Appellants.

9. **First substantial question of law** :-

Whether the decree of eviction could have been passed as learned Trial Court has not framed the issue regarding description of the suit property although the contention in that regard is specifically raised in the written statements?

9.1 It is submitted by Ms. Gaidhani, learned counsel that, there

is no issue framed regarding identity of the property. It is her contention that burden to prove that the suit property is of the ownership of the Plaintiff is on the Plaintiff. However, it is to be noted that the suit notice contending that the Plaintiff is the owner of the suit property, has not been replied to by any of the Appellants. In the said suit notice, it is specifically stated by the original Plaintiff that he has become the owner of the suit property by virtue of Sale Deed dated 7th April 2008. All the Appellants in their respective written statements have stated that as soon as they came to know that the Respondent is the owner of the suit property, they have paid rent to the Respondent. Therefore, in effect it is admitted by them that the Respondent-original Plaintiff is the landlord. All these Appellants have raised contention that they have shifted their Taparis [small shops] i.e. respective suit premises and that although, these Taparis [small shops] of the Appellants were earlier on the property owned by the Plaintiff, however, after filing of the suit, the said Taparis [small shops] have been shifted and substantial part of the said Taparis [small shops] are shifted from the area owned by the Plaintiff. It is the contention of Ms. Gaidhani, learned counsel that burden to prove the said issue has been wrongly placed on the respective Appellants-Defendants.

9.2 For appreciating the said submission, it is significant to note

that in the written statement, the said contention is raised by amendment. The said amended paragraph No.9A in Second Appeal No.312 of 2023 filed by the Appellant-Mr. Mehboob Gulzarkhan Pathan is reproduced herein below for ready reference :-

> "9अ) **दावा कलम १ यात वर्णन केलेली प्र.वादीची मिळकत ग्रा.पं.घर नं. 1635 ही संपुर्ण मिळकत वादीचे मालकीचे जागेमध्ये नाही. सदरचे मिळकतीचा निम्यापेक्षा जास्त भाग हा प्र.वादीने दि. 01.05.2015 रोजी पुढे सरकवीलेली असुन सदरची मिळकत ही नासिक औरंगाबाद महामार्गाचे लगत आहे**. त्यामुळे वादीस प्र.वादीची संपुर्ण दुकान अथवा टपरी हटवीण्याचा हक्क व अधिकार नाही. सदरचे दुकानाचा बराच भाग हा सार्वजनिक बांधकाम खात्याचे जागेत आहे. त्यामुळे वादीस प्र.वादीचे संपुर्ण दुकान हटवुन मांगणेचा हक्क व अधिकार नाही. तसेच वादीचे कब्जेस हरकत अडथळा करण्याचा हक्क व अधिकार नाही."
>
> (Emphasis added)

The English translation of said paragraph 9A is as follows :-

> "9A) The property of the Defendants i.e. **the entire property bearing Grampanchayat House No.1635, described in Paragraph No.1 of the Plaint is not located on the land of the ownership of the Plaintiff. The Defendants have shifted ahead more than half of the portion of the said property on the date 01.05.2015** and the said property is situated adjacent to the Nashik Aurangabad Highway and therefore, the Plaintiff has no right and title to remove the entire shop or stall of the Defendants. **Most of the portion of the said shop is located on the land belonging to the Public Works Department and therefore, the Plaintiff has no right and title to claim for removal** of the entire shop of the Defendants and to cause hindrance or raise objection to

the possession of the **Defendant**."

[Note: Wronlgy mentioned as the "Plaintiff" instead of "Defendant" in original paragraph.]

Both the learned counsels appearing for the Appellants stated that an identical paragraph is added by amendment in their respective written statements by all the Appellants.

9.3 For appreciating the contention of Ms. Gaidhani that burden has been wrongly placed on the Defendants to prove whether their structures are situated on the property of the Plaintiff, it is necessary to see the contention raised in paragraph No.9 of the original written statement which reads as under:-

"9) वरील कथनांना बाधा न येता या प्र.वादींचे म्हणणे आहे की, वादीचे दाव्यास कोणतेही कारण घडलेले नव्हते. वादीचेच म्हणणेप्रमाणे त्यांनी दावा मिळकत सन 2008 मध्ये विकत घेतली. त्याबाबत कोणतीही कायदेशीर नोटीस ऑफ ॲटॉर्नमेंट या प्र.वादींना वादी यांनी पाठविली नाही, तसेच नोटीसीबरोबर खरेदीखताचा आवश्यक तो दस्त पाठविला नाही. त्यामूळे **वादी हे दावा मिळकतीचे मालक झालेले आहेत याची कल्पनाच या प्र.वादींना नव्हती. त्यामूळे या आगोदर वादी यांना भाडे देण्याचा प्रश्नच उदभवला नाही. वादी हे दावा मिळकतीचे मालक झालेले आहेत हे समजलेनंतर वादी यांना या प्र.वादींनी वेळोवेळी भाडे देवू केलेले आहे**. मात्र बहुतांश वेळा ते वादी यांनी स्विकारले नाही. **अखेर वादी यांनी नोटीस पाठविली असता त्यात नमुद केलेप्रमाणे भाडेपाठविणेबाबतची पुर्तता या प्र.वादींनी तातडीने केलेली आहे**. अशाप्रकारे प्र.वादींनी भाडे थकविलेले नाही, हे प्र.वादी डिफॉल्टर नाहीत. त्यामुळे या कारणासाठी प्र.वादी विरूद्ध कबजा मागण्याचा वादीस अधिकार नाही."

(Emphasis added)

The English translation of said paragraph 9 is as follows :-

"9) Without causing prejudice to the aforesaid

averments, it is the say of **these Defendants that no cause of action of whatsoever nature had arisen for filing this suit. As per the say of the Plaintiff itself, he had purchased the suit property in the year 2008 but had not sent any legal Notice of Attornment to these Defendants. He had also not sent any necessary Instrument of Sale-Deed togetherwith the said Notice and therefore, these Defendants were not at all aware that the Plaintiff had become the owner of this suit property and as such, the question to pay rent to the Plaintiff heretofore did not arise at all. However, after these Defendants came to know that the plaintiff had become the owner of the Suit Property, they had offered to pay the rent to the Plaintiff from time to time but at most of the times, the Plaintiff had not accepted the same.** At last, when the Plaintiff sent them notice, these Defendants had immediately sent the rent as mentioned therein. Thus, these Defendants have not kept the said rent outstanding. These Defendants are not defaulters. Therefore, the Plaintiff has no right to claim for adverse possession against these Defendants over the said reason."

(Emphasis added)

Both the learned counsel appearing for the Appellants fairly stated that an almost identical averment is raised in the written statements of all the Appellants. In paragraph 9 it is specifically contended that as soon as the respective Appellants came to know that the original Plaintiff is the owner of the suit property,

they have sent rent by money order to the Plaintiff. Therefore, the said contention clearly shows that the respective Appellants have accepted that the respective Appellants i.e. original Defendants are the tenants of the suit property and that the Respondent i.e. original Plaintiff is the landlord and, therefore, they have sent rent to the original Plaintiff. Clause No.9A of the amended written statement filed by the Appellant in Second Appeal No.312 of 2023 specifically states that Gram Panchayat House No.1635 i.e. suit premises is now not entirely situated on the property of the original Plaintiff and, on 1st May 2015 the said Tapari [small shop] has been shifted and most of the part of the said Tapari is on the Nashik-Aurangabad Highway and, therefore, the suit cannot be decreed in favour of the original Plaintiff. Since, it is the contention raised by all the Appellants that the earlier suit structures were situated on the land belonging to the original Plaintiff and afterwards the said structures were partly shifted and, therefore, the burden is rightly placed on the respective Appellants i.e. Defendants. Both the Courts have held that there is no documentary evidence to show that the respective suit structures have been shifted and nothing is pointed out to show that concurrent findings recorded by both the Courts in that regards are not in accordance with evidence on record.

10. <u>Second substantial question of law</u> :-

Whether the suit seeking recovery of rent beyond the period mentioned in the suit notice is maintainable?

Third substantial question of law :-

Whether the suit notice is defective and therefore, decree of eviction passed is illegal?

10.1 As Second and Third substantial questions of law are interrelated, they are considered together. Ms. Gaidhani, learned counsel submitted that the suit has been filed by taking the contentions which are contrary to the suit notice and, therefore, the suit itself is defective and the decree passed on the basis of such suit as confirmed by the learned First Appellate Court is not sustainable.

10.2 It is true that in the plaint, the Plaintiff has raised the demand of the rent which in excess of claim for the period raised in the suit notice. Clause No.4 of the plaint reads as under :

> "४) वादीने प्रतिवादीस Transfer of Properties Act S 106 प्रमाणे **ता.१/२/२०११ रोजी वकीलामार्फत रजि. पोष्टाने तसेच पोष्टाचा दाखला घेवुन नोटीस पाठवुन प्रतिवादीची Tenancy ता.२८/२/२०११ रोजी Terminate केली** तसेच **जागा विकत घेतल्यापासुन म्हणजे ता. ७/४/२००८ ते ता. ३०/११/२०१३ पावेतोचे तळजागा भाडे** दरमहा रूपये ६०/ प्रमाणे जी रक्कम होत होती त्यात रूपये ७६८/ बाकी होते त्याची मागणी वादीने या नोटीसीत केली प्रतिवादीने तळजागेचा कब्जा दिला नाही व थकलेले भाडेही दिले नाही. **सबब ता.८/४/२००८ ते ३०/११/२०१३ पावेतो ६६ महिने व २४ दिवसांचे भाडे व भाडे नुकसान वसुल वजा जाता रूपये २७४८/ तसेच नोटीस खर्च रूपये** १०००/ मिळुन रूपये ३७४८/ प्रतिवादीकडुन वसुल करून मिळणेसाठी तसेच दाव्यातील कलम १ मधील जागेवरील प्रतिवादीची टपरी हटवुन तळजागेचा कब्जा मिळणेसाठी वादीस

सदरचा दावा दाखल करणे भाग झाले आहे."

(Emphasis added)

It is significant to note that the said paragraph 4 makes specific reference to suit notice dated 1st February 2011. Therefore, it is obvious that mentioning that the rent is not paid from 8th April 2008 to 30th November 2013 is in excess of demand made in the suit notice. However, it is to be noted that the tenancy has been terminated by suit notice dated 1st February 2011 and in a suit which has been filed on the basis of notice issued under Section 106 of the Transfer of the Property Act, 1882 (hereinafter referred to as **"the TP Act"**) what is contemplated is that the notice of termination is served on the tenant. Section 106 of the TP Act has been amended with effect from 1st January 2003, which reads as follows :

> "**106. Duration of certain leases in absence of written contract or local usage.**— (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and **a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.**
> (2) Notwithstanding anything contained in any other law for the time being in force, **the period mentioned in sub-section (1) shall commence from the date of receipt of notice**.

> (3) **A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.**
> (4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."
>
> (Emphasis added)

Thus, Section 106 of the TP Act provides that tenancy can be terminated by 15 days notice (as admittedly the present tenancy is not for agriculture or manufacturing purpose) and that a notice under Sub-Section (1) of Section 106 shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that Sub-Section, where a suit or proceeding is filed after the expiry of the period mentioned in that Sub-Section. In fact, it is not the case of any of the Appellants that either the suit notice is not served or the tenancy is terminated by giving notice of shorter period as contemplated under Section 106 of the TP Act or in any case, suit has been filed after expiry of period of suit notice as contemplated in Section 106 of the TP Act. Thus, merely asking for more rent will not be fatal for prayer seeking eviction on the ground that the tenancy is validly

terminated. In fact, both the reliefs are totally different and distinct. The relief of eviction is based on the notice of termination of tenancy issued under Section 106 of the TP Act and as far as the relief seeking payment of rent is concerned, it is on the basis of arrears of rent. It is a settled legal position that notice contemplated under Section 106 of the TP Act does not require any ground to be stated. A notice to quit clearly and unambiguously must convey the intention of the landlord to terminate the tenancy, and that in case of tenancy from month to month, it will be terminable by 15 days' notice expiring with the end of a month of the tenancy. The said requirement is now substantially modified in view of amended Section 106 of the TP Act.

10.3 For appreciating the contention that the suit is filed on the basis of valid notice issued under Section 106 of the TP Act, the relevant details are set out herein below in a tabular format:-

Sr. No.	Second Appeal No.	Name of Appellant/ Tenant	Date of Notice issued under Section 106 of the TP Act terminating tenancy	Date of filing eviction suit
1	389/2023	Vasant Damu Khaire	01/02/2011	17/12/2013
2	315/2023	Balasaheb Omkar Sarode	01/02/2011	17/12/2013
3	312/2023	Mehboob Gulzarkhan Pathan	01/02/2011	28/01/2014
4	316/2023	Sharifkha Alikha Pathan	01/02/2011	17/12/2013

5	314/2023	Prakash Laxman Kakad	01/02/2011	17/12/2013
6	395/2023	Ashraf Amirkhan Pathan	01/02/2011	17/12/2013
7	392/2023	Chandrakant Baburao Shewale	01/02/2011	17/12/2013
8	393/2023	Sanjay Prabhakar Sali	01/02/2011	17/12/2013
9	388/2023	Deepak Prabhakar Hadke	01/02/2011	17/12/2013

Section 106 of the TP Act clearly provides that tenancy can be terminated by 15 days notice and that a notice under Sub-Section (1) of Section 106 shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that Sub-Section, where a suit or proceeding is filed after the expiry of the period mentioned in that Sub-Section. Thus, suit notice is legal and valid and suit for eviction has been validly filed. Both the Courts have concurrently upheld the validity and the legality of the suit notice.

10.4 Ms. Gaidhani, learned counsel has raised certain contentions regarding quantum of arrears and the demand in the plaint of arrears of rent. However, it is an admitted position that there is a default on the part of the Appellants and in any case, both the Courts have concurrently held that there are arrears of rent and passed the decree accordingly.

10.5 Therefore, there is no substance in the above substantial questions of law raised by Ms. Gaidhani, learned counsel

appearing for the Appellants.

11. Fourth substantial question of law :-

Whether the learned Trial Court committed grave illegality and irregularity in not framing issue regarding contention that previous owners have agreed to allot an alternate premises on an ownership basis and, therefore, eviction decree passed is illegal?

11.1 As far as the substantial question of law raised regarding oral agreement by which Plaintiff has agreed to allot an alternate premises by accepting some consideration is concerned, Ms. Gaidhani, learned counsel appearing for the Appellants has raised contention that issue with respect to that aspect is not framed by the learned Trial Court. However, it is to be noted that the said contention raised in the written statement is completely outside the scope of the suit which has been filed on the basis of notice issued under Section 106 of the TP Act. The respective Appellants have raised the said contention in the written statements. It is significant to note that the Appellants have not filed any suit for specific performance of said alleged oral agreement or sought any counter claim. In fact, it is significant to note that some of the Appellants have come up with the case that there is a receipt issued either by the Plaintiff or by the vendors of the Plaintiff for payment of part consideration. However, none of the Appellants have produced any such receipt. Therefore, there is no substance

in the said substantial question of law raised by Ms. Gaidhani, learned counsel.

12. Fifth substantial question of law :-

Whether the suit for possession is maintainable as the vendors of the Plaintiffs have handed over possession of the entire property purchased by the Plaintiffs?

12.1 As far as the fifth substantial question of law raised by Mr. Rokade, learned counsel, it is his contention that the Sale Deed dated 7th April 2008 by which First Purchasers sold the property to the Second Purchaser i.e. Plaintiff, specifically records that the possession of the entire suit property admesausing 0.27 R has been handed over to the Plaintiff and therefore, possession of the suit premises has in effect already been handed over to the Plaintiff and, therefore, the suit for eviction is not maintainable.

12.2 It is very clear that the possession of entire said property handed over as recorded in said Sale Deed dated 7th April 2008 is a symbolic possession with respect to the portion of the property which is not in actual possession of the vendors. In this particular case, the First Purchasers i.e. vendors of the Plaintiff informed the Appellants by notice dated 18th December 2010 that the Plaintiff has become owner of the entire said property by virtue of Sale Deed dated 7th April 2008. The suit notice dated 1st February 2011 sent by the original Plaintiff specifically records

that the respective Appellants are the tenants of the Plaintiff and they have not paid the rent with effect from 7th April 2008. It is an admitted position that inspite of service of the suit notice, the same has not been replied to by any of the Appellants. Apart from that, it is significant to note that in the written statements filed by respective Appellants, it is specifically mentioned that as soon as the respective Appellants i.e. respective Defendants came to know that the Plaintiff has become the owner of the suit property, they have sent the rent by money order to the Plaintiff. Thus, it is clear that the respective Appellants have admitted that they are occupying suit structures i.e. Taparis [small shops] which are constructed on the portion of said 0.27 R land and that they have sent rent to the original Plaintiff after they came to know that original Plaintiff has become owner of the suit property.

12.3 It is further significant to note that by amendment in the written statements, contention has been raised by respective Appellants that respective suit structures are shifted and, therefore, now the respective suit structures are partly situated on the suit land and partly on the Nashik-Aurangabad Highway. Admittedly, both the Courts have concurrently held that respective Appellants have failed to prove the said contention. Thus, the contention raised in the written statements and additional written statements shows there is an admission that

the respective Appellants are occupying respective suit structures or part of the same which is on the said property of the Plaintiff. Therefore, there is no substance in the substantial question of law raised by Mr. Rokade, learned counsel that as Sale Deed dated 7th April 2008 mentions that possession of entire property has been handed over to the Plaintiff, in effect the possession of the suit structure is received and therefore, the suit for possession of tenanted premises is not maintainable.

13. Sixth substantial question of law :-

Whether the suit filed on the basis of notice sent by the previous owners is maintainable?

13.1 Mr. Rokade, learned counsel raised sixth substantial question of law that the suit filed on the basis of notice sent by the previous owners is not maintainable. However, the notice was sent by the previous owners i.e. First Purchasers only to inform the Appellants that the Plaintiff has become the owner by virtue of Sale Deed dated 7th April 2008. Thus, the same is merely a notice attorning the tenancy in favour of the Plaintiff. The said notice is not the suit notice and therefore, there is no substance in the said substantial question of law raised by Mr. Rokade.

14. Seventh substantial question of law :-

Whether there exists a relationship of landlord-tenant between the parties?

14.1 Mr. Rokade has raised seventh substantial question of law that there is no landlord-tenant relationship between the respective Appellants and the original Plaintiff. However, a bare perusal of the written statements clearly shows that it is an admitted position that original Plaintiff is the owner of the suit property and the respective Appellants have sent rent to the original Plaintiff. Therefore, there is no substance in the said substantial question of law raised by Mr. Rokade, learned counsel.

15. **Eighth substantial question of law :-**

Whether the suit is barred by law of limitation?

15.1 Mr. Rokade, learned counsel also raised substantial question of law that the suit itself is barred by law of limitation. Article 67 of the Limitation Act, 1963 provides limitation of twelve years for filing a suit by a landlord to recover possession from a tenant. The said period of twelve years begins to run when the tenancy is determined. In the present case, the tenancy is terminated by issuing notice dated 1st February 2011 and in eight Appeals, suits have been filed on 17th December 2013 and in one Appeal, the suit has been filed on 28th January 2014. Thus, it is clear that the suits are filed well within limitation. Therefore, there is no substance in the said substantial question of law raised by Mr. Rokade that the suit is barred by law of limitation.

16. As there is no substance in any of the substantial questions

of law raised in all these Second Appeals, same are dismissed, however, with no order as to costs.

17. In view of dismissal of the Second Appeals, nothing survives in the Interim Applications and the same are also dismissed.

18. At this stage, Ms. Gaidhani, learned counsel appearing for the Appellants in above mentioned three Second Appeals as well as Mr. Rokade, learned counsel appearing for the Appellants in concerned remaining six Second Appeals seek stay of this order. Accordingly, time of six months is granted to the Appellants to vacate their respective suit premises on the condition that, the respective Appellants to file undertakings in this Court that they shall handover possession of the respective premises to the Respondent on or before 10th January 2024 i.e. before completion of said period of six months, subject to order of stay, if any, granted by the Supreme Court. The said undertakings shall also state that the respective Appellants are only in possession of the suit property and they will pay rent for the period of six months and they will also clear all the arrears. Such undertakings to be filed on or before 31st October 2023.

19. All the Second Appeals are dismissed, subject to above.

[MADHAV J. JAMDAR, J.]

Signed by: Arjun V Kudhekar
Designation: PA To Honourable Judge
Date: 27/09/2023 14:21:19