

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.155 OF 1985

- 1) Digambarrao s/o Narayanrao Chaudhari,
Age: 40 years, Occu: Milkman
- 2) Kisanrao s/o Narayanrao Chaudhari,
Age: 37 years, Occu: Private Service
No. 1 & 2 R/o. Kazi Galli, Nanded

(Abated against appellant No. 1 & 2
as per Registrar's order dtd. 25/03/2015)

- 3) Dasrao s/o Narayanrao Chaudhari,
Age: 35 years, Occu: Nil,
R/o. Darbar Masjid Road,
Kazi Galli, Nanded

...APPELLANTS

VERSUS

- 1) Dhondiba s/o Shivappa Jujarao
(Died through LRs)
- 1A) Sakharam Dhondiba Jujarao (Died),
- 1A1) Dilip Sakharam Jujarao,
Age: 50 years, Occu: Business,
R/o. Opp. Sharma Travels, Old Mondha,
Nanded – 431601
- 1B) Kondiba Dhondiba Jujarao,
Age: 71 years, Occu: Business,
R/o. Near Gurudwara Gate No. 2,
Nanded – 431601
- 1C) Raghunath Dhondiba Jujarao (Died),
- 1C1) Chandrakant Raghunath Jujarao,
Age: 51 years, Occu: Business,
R/o. Gawali Galli, Near Gurudwara
Gate No. 1, Nanded – 431601

- 1C2) Pushpa Shankar Punekar,
Age: 47 years, Occu: Household,
R/o. Gawali Galli, Jintur,
Dist. Parbhani – 431509
- 1C3) Sangeeta Vijaykumar Kurkule,
Age: 45 years, Occu: Household,
R/o. Behind Siddeshwar Mandir,
Girni Nagar, Latur – 413512
- 1C4) Annapurna Devidas Nilankar,
Age: 43 years, Occu: Household,
R/o. Holi Katta, Udgir,
Latur – 413517
- 1C5) Aruna Baburao Chandre (Grand Daughter),
Age: 41 years,
R/o. Math Galli, Mukhed,
Nanded – 431806
- 1C6) Yashoda Raju Bhagat,
Age: 45 years, Occu: Household,
R/o. Beside Over Bridge,
At Po. Kautha (Village),
Nanded – 431603
- 1D) Balaji Dhondiba Jujarao (Died),
- 1D1) Ravi Balaji Jujarao,
Age: 35 years, Occu: Household,
R/o. Opp. Indira Gandhi College,
CIDCO, Nanded – 431603
- 1D2) Deepak Balaji Jujarao,
Age: 30 years, Occu: Business,
R/o. Opp. Indira Gandhi College,
CIDCO, Nanded – 431603
- 1D3) Amol Balaji Jujarao,
Age: 28 years, Occu: Business,
R/o. Opp. Indira Gandhi College,
CIDCO, Nanded – 431603

- 1D4) Jyoti Shilesh Amberkhane,
Age: 32 years, Occu: H.H.,
R/o. Navi Abadi, Udgir,
Dist. Latur – 413517
- 1E) Ramdas Dhondiba Jujarao,
Age: 55 years, Occu: Business,
R/o. Near Goverdhan Ghat Bridge,
Kautha, Nanded – 431603
- 1F) Hari Dhondiba Jujarao,
Age: 52 years, Occu: Business,
R/o. Itwara Bazar Nanded – 431606
- 2) Sitaram s/o Gangaram Jujarao,
Age: 38 years, Occu: Business,
R/o. Kazigalli, Nanded
- 3) Datta s/o Gangaram Jujarao,
Age: 35 years, Occu: Business,
R/o. Kazigalli, Nanded
- 4) Prakash s/o Gangaram Jujarao,
Age: 39 years, Occu: Business,
R/o. Kazigalli, Nanded

...RESPONDENTS

Mr B. S. Shinde, Advocate holding for Mr P. R. Deshmukh, Advocate for appellants;
Mr M. V. Ghatge, Advocate holding for Mr S. R. Bagal, Advocate for respondent No. 4

CORAM : N.W. SAMBRE, J.**DATE : 9th July, 2015****ORAL ORDER :**

Heard respective Counsel.

2. The present appellants are the plaintiffs in Special Civil Suit No.60 of 1976, which was filed for declaration of title and possession. The suit property consists of Municipal House No.5-3-250, situated at Kazi Galli, Nanded.

3. The suit filed by the appellants came to be decreed by the Trial Court by judgment and decree dated 31st March, 1979, whereby it was declared that the appellants are entitled for declaration of title and recovery of possession as against the respondents/defendants, in relation to house bearing M.C. No.5-3-250 at Kazi Galli, Nanded, to the extent as shown in green colour in the plaint map.

4. There was one more facet to the proceedings. The respondents/defendants instituted Regular Civil Suit No.47 of 1976 against the present appellants for simplicitor injunction, claiming to have title to the property. The said suit came to be decreed by the common judgment dated 31st March, 1979, referred *supra*. In Regular Civil Appeal No.273 of 1983, preferred by the respondents, the appellate court reversed the decree and dismissed the suit for declaration of title and possession instituted by the present appellants. As such, present Second Appeal.

5. So far as the dismissal of Regular Civil Suit No.47 of 1976 for injunction is concerned, it has attained finality up to this Court in Second Appeal No.278 of 1986.

6. At the out-set, learned Counsel appearing on behalf of the appellants claims that the appellants have received the property in question through partition, having common ancestors, namely, Satwaji Mahadji, who were born to Kamaji.

7. The respondents herein claim to have received the property in question through the will deed executed in their favour by the daughter of one Mohnaji, who was born to Mahadji.

8. Be that as it may, though the learned Trial Court had decreed the suit, the appellate court reversed the same, which is questioned herein, on the ground that the evidence appreciated by the Court below, i.e. lower appellate court was completely perverse.

9. While over-coming the said submissions, learned Counsel appearing on behalf of respondent no.4, by inviting my attention to the provisions of sections 15 and 16 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (hereinafter referred to as the "Act", for the sake of brevity), would urge that the appropriate remedy for claim made in

suit lies with the Rent Controller and not the Civil Court. In support of his contention, he has relied upon the judgment rendered by the High Court at Hyderabad, in the matter of **Govind Rao vs. Bhagwan**, reported in **AIR 1956 Hy Govind Rao vs. Bhagwan derabad 17**, so as to canvass that the entire claim is required to be taken up before the Rent Controller. He has invited my attention to the observations made in paragraphs 2 and 3 of the said judgment, which read thus :-

(2) “The learned advocate of the appellant contests this appeal solely on the ground that the civil Courts are barred from entertaining suits for ejectment, the exclusive jurisdiction for which has been conferred on the Rent Controller under Section 8 of the Rent Control Order which was in force at the time when the suit was instituted, and also by virtue of Section 10 of the present Hyderabad Houses (Rent, Eviction and Lease) Control Act of 1954, I enterily agree; Section 8 para.(1) runs as follows:

“No tenant of a house shall be evicted from the house in execution of a decree or otherwise whether before the enforcement of this order or after it, except under an order mentioned in this paragraph”.

This section confers undoubtedly an exclusive jurisdiction on the Rent Controller over actions in ejectment from houses falling under the Order. The order of eviction could only be passed under that special law. The position is the same under the present Hyderabad Houses (Rent,

Eviction and Lease) Control Act by virtue of Section 10.

The view taken by the Madras High Court in 'Muhammadunny v. M. Unniri', AIR 1949 Mad 765(A) was that under Cl. (1), Section 8, Madras Non-Residential Buildings and Control Order of 1942, that the jurisdiction of executing a decree, and not passing a decree of eviction has been taken away from the civil Courts.

I think that the words, "in execution of a decree or otherwise" which occur in para (1) of Section 10. Hyderabad Houses (Rent, Eviction and Lease) Control Act, leave no room for any similar interpretation. There are two decisions of this High Court in which matter has received consideration. In-'Laxman Rao v. Rukmani Bai', AIR 1952 Hyd 52(B), a case in which the retrospective effect of para (1) of Section 8 was in question, Dr. M.S. Ali Khan, J. held that it applied to pending cases the eviction of a tenant under it by the civil Courts is barred. In 'Mahomed Gous v. Karunissa Begum, AIR 1951 Hyd 111 (C), a Division Bench Las, while considering whether a notice to quit was necessary under the Transfer of Property Act in an action for eviction to which the Rent Control Order applied, observed that no tenant can be evicted except in due compliance of Section 8.

After the Full Bench decision in – 'Pannalal Lahoti v. State of Hyderabad', AIR 1954 Hyd 129 (D), of this Court holding that this order was an emergency measure and on cessation of the emergency which was the second world was in this ins-lance, the Rent Control Order expired, the present Hyderabad Houses (Rent, Eviction and Lease)

Control Act was passed by virtue of Section 31 of which all the proceedings taken and order made under the former Act were validated, and it was provided in Clause (c) of that section that they will be deemed to have been taken, or made under the corresponding provisions of the same Act.

The corresponding provision to Section 8 of the Order is Section 10 of this Act, in Clause (1) of which the words, "in execution of decree or otherwise" occur which also bar the jurisdiction for entertaining such actions.

3. The learned Advocate for the respondent relying on – 'Mohd. Yasin v. Nawab Saif Nawaz Tuns' Deccan LR 246 (E) argues that if the defendant denies the title the bar to the civil Court's jurisdiction is removed. I do not agree. That case was decided before the amendment of Section 8. Besides this, in my opinion, it will be contrary to the principle that jurisdiction is determined by statement in the plaint and not by what is pleaded by the defendant; to hold otherwise would mean that every tenant will be at liberty by setting up his own title, or denying that of the landlord to oust the jurisdiction of the Rent Controller.

What the position will be if the plaintiff himself states in the plaint that the defendant is denying his title, is a question that does not arise in this case and need not be decided."

10. In view of above submissions made on behalf of the present respondents, that is to say, the jurisdiction vests with the Rent Controller

to decide the claim made in the suit, learned Counsel appearing on behalf of the appellants makes a motion for withdrawal of the present Second Appeal.

11. Learned Counsel appearing on behalf of respondent no.4 submits that respondent shall not raise any objection to the jurisdiction of Rent Controller, as is canvassed in the present appeal, if the claim is brought in action.

12. The motion, in the light of the submissions made by the learned Counsel appearing on behalf of the respondents, is required to be granted. Thus, the Second Appeal stands disposed of as withdrawn, with liberty to the present appellants to take out appropriate proceedings under the provisions of the said Act. It is expected of the learned Rent Controller to decide the proceedings without being influenced by the observations made by the Courts below.

(N.W. SAMBRE, J.)

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