

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.2044 OF 1992
- WITH -
WRIT PETITION NO.2045 OF 1992

Sambhaji s/o Kisan Ohal
(deceased) through legal heris -

- 1-A Subhadrabai Sambhaji Ohal
- 1-B Chandrakant Sambhaji Ohal
- 1-C Suresh Sambhaji Ohal
- 1-D Bharati Sambhaji Ohal
- 1-E Hira Sambhaji Ohal

.. Petitioners
(L.Rs. Of Orig. Defendant)

Versus

- 1. Bhalchandra Vinayak Khisti
(deceased) through L.Rs.
- 1-A Shriram Bhalchandra Khisti
(Naik) (deceased) through L.Rs.
- 1A-1 Nirmalabai w/o Shriram Naik
(Khisti)
- 1A-2 Bhushan s/o Shriram Naik (Khisti)
- 1A-3 Pramod s/o Shriram Naik (Khisti)
- 1A-4 Madhav s/o Shriram Naik (Khisti)
- 1A-5 Pratibha Shriram Naik (Khisti)
- 1A-6 Suhas Shriram Naik (Khisti)

All are Major,
All R/o Parner, Taluka Parner,
District Ahmednagar

- 1-B Madhusudan s/o Bhalchandra Khisti
(Naik), Major, Occu. Landlord,
R/o Khist Galli, Church road,
Ahmednagar
- 1-C Shalini Shriram Patil,
Major, Occu. Household,
R/o Kamala Nehru Ward,
At Post Warora, Taluka Warora,
District Chandrapur

.. Respondents
(Orig. L.Rs. Of Plaintiff)

Mr V.S. Bedre, Advocate for petitioners
Respondents served

CORAM : N.W. SAMBRE, J.

DATE : 19th March 2015

ORAL JUDGMENT

1. Since the parties to both these petitions are same and the issue involved is identical, the petitions are taken up for disposal together.

In Writ Petition No.2044 of 1992, the facts are as under :

2. The present petitioners' father deceased Sambhaji was defendant in Regular Civil Suit No.536/1997 filed in the Court of 2nd Joint Civil Judge, Junior Division, Ahmednagar. The said suit was for recovery of possession of suit premises and recovery of arrears of rent. The suit premises consists of four *khanas* 19' x 9' out of Municipal House No.5476 and bearing City Survey No.2641 at Ahmednagar city for which agreed rent was Rs.7 per month and the tenancy was to commence from first day of English month.

3. The petitioner - original defendant since did not pay rent from 1st December 1979 and was a willful defaulter for more than a period of six months, the respondent - landlord issued notice on 22nd November 1976 claiming arrears of rent, possession, which was not honoured, as such the suit for possession and recovery of arrears of rent was preferred.

4. In Writ Petition No.2045 of 1992, the suit property consists of four *khanas* 19' x 18' out of Municipal House No.5476 located on the South side of the premises, which is subject matter of Writ Petition No.2044 of 1992. According to landlord, the said premises were given on rent to the petitioner – defendant but he had encroached on the said property.

5. Both the suits i.e. Regular Civil Suit No.536 of 1977 and Regular Civil Suit No.544 of 1977 came to be decreed by the Court of Civil Judge, Junior Division, Ahmednagar vide judgment and decree dated 25th February 1986 and were subject matter of appeal before the learned Additional District Judge, Ahmednagar vide Regular Civil Appeal No.137 of 1986 and Appeal No.138 of 1986. The said appeals came to be dismissed by an order dated 1st July 1992, as such present writ petitions by the tenants.

6. Heard Mr Bedre, learned Counsel for the petitioners.

7. It is required to be noted that the learned Civil Judge, Junior Division, Ahmednagar, while dealing with the defence raised by the petitioner – defendant has framed an issue as regards the validity of suit notice, the correct description of property, arrears of rent for more than six months, standard rent and proper termination of tenancy. The trial Court then proceeded to refer the findings against the petitioner – original defendant based on the appreciation of the pleadings and the evidence thereto. Learned trial Court noticed that the appropriate notice Exh.57 dated 22nd November 1976 was proved,

including that of the acknowledgment Exh.58. It was then noted by learned trial Court that in addition to the suit premises, the petitioner was in possession of other 4 *khanas* which were adjacent to the earlier premises, as narrated herein above. It was noted by learned trial Court from the evidence of petitioner that agreement to sell which was executed i.e. Exh.66 about confirmation of possession of the Southern portion and the delivery of Northern portion i.e. 19' x 18' at the time of execution of sale-deed. The trial Court then noticed that the present petitioner was not the tenant in respect of Southern *khanas* of the premises. Learned trial Court appreciated the evidence of witnesses of plaintiff – respondent Madhusudan, who deposed at Exh.56 and noted about the arrears of rent from 1st December 1969 onwards. The contents of the defendant's reply Exh.59 promising to pay the rent for a period of 1st December 1969 to 30th November 1976 was duly appreciated and as such, the finding of default of payment of rent was given.

8. The defence of the petitioner – original defendant that he has become owner of the suit property and as such there cannot be finding of payment of arrears of rent is concerned, the Court noticed that there was no title established by the petitioner over the suit property. The trial Court proceeded to consider the plea of the petitioner as regards denial of title of the respondent over the suit property and has decreed the suit.

9. In the appeals, the appellate Court noticed that the respondent – original plaintiff brought on record about existence of tenancy rights, the encroachment made by the petitioner on the additional lane and admissions given by the petitioner in the cross-examination about the same. The lower appellate Court proceeded to consider the transaction of agreement to sell of the suit premises (+) four *khanas* premises which is at Exh.66 and gave finding as regards non-payment of rent. The non-execution of sale deed pursuant to Exh.66 by the petitioner and the effect of Section 53-A of the Transfer of property Act was also taken into account while dismissing the appeals.

10. So far as the Writ Petition No.2045 of 1992 is concerned, the learned trial Court decreed the suit after recording the findings on issues which were framed at Exh.17 by casting the burden on the present petitioner as regards handing over the premises on rent and unauthorised construction carried out by the petitioner and ordered entitlement of present respondent-plaintiff for possession of the suit property.

11. The appellate Court based on the said evidence has confirmed the findings, as narrated herein above.

12. Learned Counsel for the petitioners Mr Bedre would urge that the appreciation of evidence by both the Courts below is perverse and sought re-appreciation of the evidence for recording findings in favour of petitioners. He would further urge that the learned Courts below

have committed error of law by giving findings of tenancy rights in favour of respondent – original plaintiff when there was an agreement to sell Exh.66.

13. So far as the above referred findings are concerned, it is required to be noted that both the Courts below have concurrently held that the petitioner – tenant is required to suffer decree for possession at the hands of landlord – plaintiff. Upon perusal of both the judgments, it is noticed that the petitioner – original defendant remained om arrears for quite long period and the defence about agreement to sell Exh.66 was set up. So far as the said defence is concerned, it is required to be noted that the transfer of title by virtue of Exh.66, agreement to sell was not at all brought on record so as to deny the title of the present respondents to the suit property.

14. Once both the Courts having concurrently held against the petitioners that they are in arrears of rent and upon demand by the landlord have failed to make payment of rent, in my opinion, particularly when the perversity could not be noticed, the petitions fail, stand dismissed.

(N.W. SAMBRE, J.)

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