

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

SECOND APPEAL NO. 278 OF 2015

Laxman s/o Rambhau Niras

**..... APPELLANT
[ORI. DEFENDANT]**

V E R S U S

Pralhad s/o Balaji Gavhankar

**..... RESPONDENT
[ORI. PLAINTIFF]**

.....

Mr. M.P.Kale, Advocate for Appellant.

Mr. M.M.Patil (Beedkar), Advocate for
Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 13th OCTOBER, 2015

ORDER :-

1. Present Second Appeal is filed to challenge the Judgment and decree dated 13/12/2013 of R.C.S. No. 23/2006 which was pending in the Court of Civil Judge [Sr.Division], Gangakhed, district Parbhani and also the Judgment and Order dated 04/04/2015 in R.C.A. No. 1/2014 which was pending in the Court of District Judge – 1 at Gangakhed, district Parbhani.

2. The Court of Civil Judge [Sr.Division], Gangakhed has given decree of possession in favour of

the present defendant and the decision is confirmed in the Appeal by the Court of District Judge – 1 at Gangakhed.

3. Heard learned counsels for both sides.

4. It is the case of the plaintiff that the suit property, the shop premises, which is given number 29 in the record of local body, came to be allotted to him on lease basis in the year 1991. It is contended that subsequently shop No. 23 was allotted on lease basis to defendant and that was done in the year 1994. It is the case of the plaintiff that in the year 1995, he and defendant started business in partnership in shop No. 23 under the name and style as M/s Kisan Traders, but the partnership was dissolved in 2005 and shop No. 23 is in possession of the defendant.

5. It is contended that in the year 1994, plaintiff had given possession of shop No. 29 to the defendant as licensee for doing some business. It is contended that one cycle mart was started by the defendant in the said shop and plaintiff was paying rent to the local body in respect of that shop. It is contended that when the aforesaid partnership business was closed, plaintiff decided to start his own business in shop No. 29 and so he requested the defendant to return the possession of said shop. It is contended that defendant refused to hand over the possession and so Suit was required to be filed. Notice was given by the plaintiff to

the defendant on 23/12/2005.

6. Defendant filed Written Statement and contested the Suit. He denied that shop No. 29 was allotted to plaintiff by the local body. He contended that shop No. 29 was obtained by him from local body in the name of plaintiff. It is contended that due to the said circumstances, possession of shop No. 29 is with him. It is contended that defendant wanted to take steps to see that the shop is entered in his name in the record of local body, but the plaintiff refused and demanded ₹ 3,00,000/- [Rupees Three Lakh].

7. Issues were framed on the basis of aforesaid pleadings. Both the sides adduced evidence. The courts below have held that shop No. 29 was allotted to plaintiff by Municipal Council, Gangakhed in the year 1991 and defendant was occupying the shop as licensee and the possession was given to the defendant by plaintiff in the year 1994. It is held that as defendant is licensee, plaintiff is entitled to get the possession.

8. Learned counsel for the appellant/defendant submitted that Municipal Council was necessary party to the Suit and on that ground the Suit ought to have been dismissed. He also submitted that the circumstance that the defendant was in possession, ought to have been considered by the courts below and on that basis courts below ought to have given finding that the shop was taken by the defendant in the name of plaintiff. Learned

counsel submitted that substantial questions of law need to be formulated on these grounds.

9. The submissions made and the evidence discussed by the courts below in the Judgments show that the record of allotment is in favour of the plaintiff. He had paid the rent of the said shop till the year 1995. Defendant could produce rent receipts which started from November, 1996, but those receipts were also showing that plaintiff was lessee of the Municipal Council, though payment was made through the defendant. There is some record like record of telephone connection obtained by the defendant for the said shop and license issued in favour of defendant under the Shops and Establishment Act.

10. It is not disputed that as per the record of the Municipal Council, the shop was allotted to plaintiff and there is also the record to show that till the year 1995, plaintiff had paid rent of this shop. The other record in favour of the defendant is of subsequent period, the period when, according to plaintiff, defendant was occupying the shop as licensee.

11. In view of the aforesaid admitted position and the record, it was not possible for the defendant to show that he had taken shop No. 29 in the name of plaintiff. On preponderance of probability, plaintiff has proved that defendant was occupying the said shop as licensee. Finding of the courts below on this point is

concurrent. There is no material, on the basis of which substantial questions of law can be formulated.

12. In the result, present Second Appeal stands dismissed. In view of dismissal of Second Appeal, Civil Application No. 7262 of 2015 also stands disposed of.

[T.V.NALAWADE, J.]

KNP/S.A. 278.2015