

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

SECOND APPEAL NO. 9 OF 2015

Dattatray s/o Gangadhar Shinde .. Appellant / Defendant

vs

Rahuri Education Society's
Vidyamandir Prashala .. Respondent/ Defendant

Mrs. Madhaveshwari Thube Mhase, Advocate for appellant
Mr. V. S. Bedre, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
2ND DECEMBER, 2015

ORDER:

1. Heard learned counsel for the appellant and respondent.
2. The undisputed position appears to be that there is a lease of open land in favour of the appellant by the respondent for the other purpose than agriculture. The appellant is holding the land on lease since 1972-73. With the passage of time, it appears, it occurred to the respondent that property is required by respondent for its purposes and as the appellant has also committed default in making payment, respondent decided to terminate the lease.
3. Accordingly, a notice came to be issued to appellant by the respondent through advocate on 08-05-2002 pursuant to section 106 of the Transfer of Property Act, 1882 ("The Act"), determining

the lease. Notice appears to have been replied and payment of rent had been tendered which had been contended to have been accepted by the respondent. Since the appellant, pursuant to the notice did not vacate the premises, the suit ensued at the instance of respondent.

4. Upon pleadings by the parties, the trial court had framed issues, *inter alia*, issue no. 4 whether the plaintiff had proved that it had validly terminated tenancy of the present appellant-defendant and issue no. 5 whether the plaintiff is entitled for the possession of suit property, giving affirmative findings in favour of plaintiff on both the issues.

5. In the appeal by present appellant before the district court, single point for determination had been framed with regard to whether the notice to quit is legal and had been decided in plaintiff's favour.

6. Learned counsel appearing for the appellant submits, after the notice rent had been duly tendered and had been accepted. Under the circumstances, the lease is protected having regard to section 112 of the Act since there is waiver by acceptance of rent. It is further being contended that both the courts have considered that the forfeiture of the lease is under section 111(g) of the Act and have accordingly considered the matter.

7. Learned counsel for the appellant has also submitted that having accepted rent and further that the other purpose for which lease was sought to be terminated was also satisfied with the construction on the area adjoining the suit premises and as such said need has been satisfied.

8. Learned counsel for the respondent, however, submits that it was decided by resolution by the trust to terminate the lease and accordingly notice had been issued with a clear intention to terminate the lease. The reasons given under the notice have been additional factors which have weighed while terminating the lease. However, the intention of the respondent-landlord was clearly to terminate the lease which accordingly has been terminated.

9. The submission of the appellant with regard to construction on the area adjoining the suit premises, has been countered by learned counsel for the respondent, stating that the lease stands determined with the service of the notice of the appellant-defendant and any subsequent event would not attenuate the rigour of termination of tenancy with the service of notice. He further submits that the plaintiff requires land for its own purpose. Under the circumstances, there is no substance in the second appeal and the same deserves to be dismissed.

10. The courts below have considered that the notice gives clear indication of intention of the plaintiff to terminate the lease and that accordingly it has been served. There is absence of any particulars about acceptance of rent referable to section 112. Courts below have found that notice is pursuant to section 106 and by operation of section 111 (h) the lease stood determined. Alleged acceptance of amount of rent of defaulted period does not in any way affect the termination of lease sought under the notice. In the circumstances, the courts have considered that by the notice pursuant to the provisions of the Act, lease stands determined and the notice to quit had been held to be legal.

11. Having regard to aforesaid position expounded under the orders of both the courts below, this is not a case wherein it can be said that the second appeal gives rise to any substantial question of law.

12. In the circumstances, second appeal does not deserve any consideration and as such, stands dismissed.

13. Learned counsel for the appellant – defendant at this stage requests for reasonable time to vacate the suit premises. Learned counsel for the respondent, however, purports to oppose the request stating that the appellant has been occupying the premises since 1972-73.

14. Appellant to vacate the suit premises within a period of six months from today. He shall file requisite undertaking before this court to the effect that he would not create any third party right, title or interest or encumbrances of whatsoever nature in and/or over the suit premises nor would he change nature of the property and further that he would continue to pay amount towards compensation for occupation of the suit premises to the respondent which shall be equal to the amount at the rate at which lease rent was being paid. Appellant shall undertake to give vacant possession of the suit property peacefully and without any disturbance to the respondent at the end of six months or before. Undertaking to be filed within a period of four weeks from today.

SUNIL P. DESHMUKH, J.

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