

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.274/2015

Shrawan S/o Laxmanrao Tambulkar

..Versus..

Laxmanrao Z. Ghatode (dead) through L.Rs.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 30.11.2015

Heard Shri A.N. Ansari, advocate for the appellant and Shri
P.S. Sadavarte, advocate for the respondents.

The appellant - original defendant has challenged the judgment
passed by the subordinate Courts concurrently upholding the claim of
the respondents - original plaintiffs and granting decree for possession,
arrears of rent and for enquiry under Order 20 Rule 12 of the Code of
Civil Procedure.

Shri A.N. Ansari, advocate for the appellant has submitted that

the decree could not have been granted in favour of the respondents as neither the original landlord nor the respondents who are purchasers of the suit property had given the notice informing the appellant about the fact that the suit property is purchased by the respondents. It is argued that both the Courts have not framed the issue on the point of comparative hardship and, therefore, the judgment passed by the subordinate Courts granting decree for possession is unsustainable. It is further submitted that the respondents claimed rent at the rate of Rs.120/- per month excluding the electricity charges, though the rent was Rs.60/- per month. It is submitted that the respondents have not been able to establish that the rent of the suit premises was Rs.120/- per month. It is submitted that the appellant has examined three witnesses in addition to the appellant himself to prove that the rent of the suit premises was Rs.60/- per month.

As far as the contention of the appellant regarding non-issuance of notice of attornment is concerned, it cannot be

accepted in view of the notice dated 12th April, 1996 issued by the respondents and which has not been replied by the appellant. Shri P.S. Sadavarte, advocate for the respondents has rightly relied on the judgment given in the case of *Mahendra Raghunathdas Gupta V/s. Vishwanath Bhikaji Mogul and others* reported in **1997(3) Mh.L.J.274** in which it is laid down that law does not require that transfer of right of landlord can take effect only if tenant attorns to him, and a notice under Section 106 of the Transfer of Property Act by transferor - landlord would be sufficient to maintain the suit for ejectment.

The suit property is situated at Kondhali, Taluka Katol, Distt. Nagpur. It is undisputed that the provisions of the Maharashtra Rent Control Act, 1999 are not applicable to the area where the suit property is situated. The learned advocate for the appellant has not been able to point out that the Court, while dealing with the suit for ejectment in respect of property to which the provisions of the Maharashtra Rent Control Act, 1999 are not applicable, is required to deal with the issue of comparative hardship.

As far as the contention of the appellant that the rent of the suit property was Rs.60/- per month and not Rs.120/- per month as claimed by the respondents is concerned, it is a pure question of fact. The subordinate Courts, after appreciating the evidence on the record and considering the fact that the appellant did not reply to the notice issued by the respondents claiming rent at the rate of Rs.120/- per month, have concluded that the respondents have proved that the rent of the suit property was Rs.120/- per month. The appellant has not been able to point any perversity in the findings recorded by the subordinate Courts.

The appeal does not raise any substantial question of law for consideration by this Court. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.