

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

903. SA/182/2009

**IBRAHIM KHAN S/O
SUJAT KHAN**

V/S

ABDUL WAHAB S/O HAJI ABDUL
AND OTHERS

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Mr. S.K.Chavan, Advocate for Appellant.

Mr.A.A.Mukhedkar, Advocate for R - 4.

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CORAM : T.V.NALAWADE, J.

DATE : 5th MAY, 2016

ORDER :-

1. The Appeal is filed to challenge the Judgment and Decree of R.C.S. No. 9/1987 which was pending in the Court of the Civil Judge [Jr. Division], Parbhani and also the Judgment and Decree of R.C.A. No. 5/2005 which was pending in the Court of the Principal District Judge, Parbhani. The Suit was filed by present respondent Abdul Wahab for relief of recovery of possession and for mandatory injunction and such relief is given to him. Both sides are heard.

2. The Suit was filed in respect of portion of land S.No. 441 situated within the municipal limits of Parbhani. It

is the case of plaintiff that the defendant was given possession of portion of 20 x 40 ft. which was open space on monthly rent of Rs. 40/- by the previous owner and then under sale deed dated 27/12/1978 made by the owner Malanbai, plaintiff purchased the suit property. It is contended that the defendant is willful defaulter and he did not make the payment of the rent regularly and so the Suit was required to be filed for recovery of arrears of rent. It is contended that all the Suits filed for recovery of arrears of rent viz. R.C.S. Nos. 74/1982, 32/1983, 13/1986, etc. are decided in favour of the plaintiff. On these grounds, Suit was filed for recovery of possession.

3. The defendant contested the Suit by filing Written Statement. He denied everything. He admitted that some Suits were filed by the plaintiff for recovery of arrears of rent but he denied that plaintiff is owner of the suit property. He contended that the space which is in his possession is part of S.No. 445, which belongs to the Govt. and so the plaintiff is not entitled to get possession. He contended that he had filed R.C.S. No. 74/1982 against the Govt. for getting regularization of the encroachment and so the present Suit is not tenable.

4. Issues were framed on the basis of aforesaid pleadings. Both the Courts below have held that in view of the decision given in the past by the Civil Court in rent recovery Suit, there is no need to decide the title of the plaintiff. The Courts below have held that there was the relationship of tenancy and so the plaintiff is entitled to get

possession. Decree in respect of arrears of rent is also given.

5. The Appeal was admitted on following substantial questions of law by order dated 09/04/2010.

[i] Whether the plaintiff proves that the suit portion of the property is owned by him and the defendant – appellant is a monthly tenant ?

[ii] Whether the the tenancy of the defendant – appellant is legally terminated by the plaintiff ?

6. Though the aforesaid substantial questions of law were formulated by this Court for admission of the Appeal, in view of the aforesaid record, this Court holds that such substantial questions of law are not involved in the matter. The evidence was given on the point of termination of tenancy also.

7. It appears that in the present proceeding, some order was made by other Hon'ble Judge and Govt. was directed to file its Say. With the Say, some record like report of the Tahsildar is available. Reliance was placed on that record by appellant. It appears that notice was issued to the present appellant/original defendant and he was asked to remove the encroachment as the authority was of the opinion that the encroachment was on the Govt. land. The authority formed opinion that there is some mistake created in the revenue record and the area of G.No. 441 could not have been the area as shown in the revenue record as some portion

was already used for construction of road. However, there is also observation that boundary marks are not there between S.Nos. 441 and 445. This court holds that the contention of the Govt. and the record which the present appellant wants to place on record, can not be used in the present matter. Already there are the decisions against the defendant/present appellant of Civil court and is held to be tenant of present respondent/plaintiff. The Govt. was not party to the matter and the decision of this court will not be binding on the Govt. If the Govt. finds that the property belongs to the Govt., there will be liberty to the Govt. to take step like recovery of possession even from the present appellant. If the plaintiff gets possession of the suit property, from him also, the Govt. can take the possession after following the procedure laid down by law. Thus, the record of aforesaid nature can not help the present appellant in any way to get relief like setting aside of the decrees made by the Courts below against him. The findings are on questions of facts and no substantial question of law as such is involved in the matter.

8. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 3008 of 2010 does not survive and stands disposed of.

[T.V.NALAWADE, J.]