

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and Registrar's orders.	Notes, of Court's orders or	Office Coram, orders or	Court's or Judge's orders.
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SECOND APPEAL NO. 571 OF 2015
WITH CA/13004/2015 IN SA/571/2015

DATTATRAYA TATYA SARODE AND ANOTHER
VERSUS
BABURAO VITHOBA GUJAR LRS BHASKAR AND OTHERS

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Advocate for Appellants : Mrs C.S. Deshmukh.
Advocate for Respondent Nos.1A to 1D: Mr. K. J. Tandale.

CORAM: T. V. NALAWADE, J.
DATED: 7th MARCH, 2016.

PER COURT:

1. The appeal is filed against judgment and decree of Regular Civil Appeal No.14 of 2013 which was pending in the Court of District Judge No.3, Ahmednagar and also against the judgment and decree of Regular Civil Suit No.318 of 2002 which was pending in the Court of Civil Judge, Junior Division, Rahuri, District Ahmednagar. The suit filed by Respondents for relief of possession and for recovery of damages is decreed. The suit was filed under the provisions of Transfer of Property Act. Both the sides are

heard.

2. The suit was filed in respect of open space which is part and parcel of Municipal House No.802, situated at Rahuri, within the local limits of Municipal Council, Rahuri, District Ahmednagar. The open space having length of 20 feet North-South and width of 15 ft. East-West of this property was given on lease basis by plaintiffs to original defendant for a period of 5 years on 28th September, 1987. This document was registered. It is a case of plaintiffs that the period of lease expired in September, 1992 but the defendant did not return back the possession of the open space. It is contended that when notice was given by plaintiffs to defendants to vacate the premises, the defendants filed civil suit for relief of injunction. The open space was given to one Eknath Tatya Sarode and the defendants are his successors and legal representatives. It is contended that the defendants have virtually no concern with the lease but after the death of Eknath the defendants have illegally started a medical dispensary on the open space. It is the case of plaintiffs that they want the suit space as they want it for personal use. It is contended that though it was not necessary, the lease was

terminated by giving legal notice but after that also the possession is not returned by the defendants.

3. Defendant Nos.1 and 2 filed written statement and contested the matter. They contended that the open space was given for running dispensary as defendant No.1 had completed a medical course and he was in need of space. It is contended that the space was taken on lease by Eknath but it was taken for defendant No.1. It is contended that on this place, defendants have constructed a building by spending big amount and constructed building is being used for running a dispensary. It is contended that telephone connection was taken in the year 1989 for this dispensary.

4. It is the case of defendants that from time to time some amount was taken by plaintiff under pretext that he was in need of money and on the date of the agreement also the amount of Rs.10,000/- was given to the plaintiff. It is contended that no receipts were given in respect of subsequent amounts paid by the defendants to plaintiff.

5. It is the case of defendants that as plaintiffs tried to take the possession forcibly, suit was filed for relief of injunction. It is contended that false case of atrocity was

also filed against the defendants by the plaintiffs to pressurise them. However, defendant No.1 admitted that for three years preceding to the date of suit, rent was not paid. Willingness was shown by the defendants to pay such rent.

6. The issues were framed on the basis of aforesaid pleadings. After the death of plaintiff his legal representatives came on the record and one legal representative Smt. Kalpana gave evidence to prove the aforesaid contentions. She admitted that under the registered lease deed amount of Rs.10,000/- was given but she denied that subsequently some amount was given and that amount is around Rs.11,063/-. In the evidence, the notice given for termination of lease is proved. She has given evidence on the requirement of the family, in respect of the suit premises. The original document of lease was produced before the trial Court. During her cross examination, nothing could be brought on record to create a probability that after expiry of the lease period, rent was accepted by the plaintiffs.

7. In rebuttal, defendant No.1 gave evidence, which is in accordance with the aforesaid contentions made in the

written statement. He admitted that the property was taken on lease by his elder brother Eknath and the total amount of rent paid under the lease document was for the period of 5 years. He also admitted that the period fixed under the lease document expired in the year 1992. He admits that after expiry of the fixed period, no new agreement was made. It is already mentioned that in the written statement it is admitted that the defendants had not paid any amount, at least for 3 years. This circumstance and the circumstance that there is no record with the defendants to prove that after 1992 any amount was paid to plaintiff, inference is easy that there was no renewal of lease and no amount was paid to plaintiffs as rent. The giving of notice of termination of lease by plaintiffs is not disputed and as such there is no necessity to discuss material in that regard.

8. The deed of lease at Exhibit-69 which is a registered document, shows that the period was fixed of 5 years starting from 28th September, 1987 and property given was open space. The amount of Rs.10,000/- was given before the Sub Registrar as the rent of this entire period of 5 years. The condition was made in the document that if at all the

lessee wanted to make some construction it was to be Kachcha construction and no building was to be constructed on the open space and if such construction was made it was responsibility of lessee to remove it after expiry of the lease period. No mention is there that space was given for running dispensary.

9. Defendants have given evidence that some construction was made by them after taking possession of the open space and on that basis some submissions are made in the present proceeding. By placing reliance on the case reported as ***AIR 1997 SC 404 (Nalanikant Ramadas, Gujjar V/s Tulasibai (Dead) by L.Rs. and others)***.

It was submitted by the learned counsel that the provisions of Maharashtra Rent Control Act (The previous provisions of Bombay, Rents, Hotel and Lodging House Rates Control Act, 1947) are applicable to the suit premises and so the suit itself was not tenable. Such defence was not taken in the written statement. The relevant pleading is already quoted and the contents of the deed of lease are also quoted by this Court. They show that open space was given on lease basis for fixed period of 5 years and total amount of Rs.10,000/- was given for this period. There was a condition

that no Pacca construction of building was to be made by lessee. In view of these facts and circumstances of the present matter the observations made by the Apex Court in the case cited supra are of no use. The purpose for the lease in the case reported was mentioned and it was Pacca construction and so it was falling under the definition of "*Premises*" given in Bombay Rent Act. One more circumstance was argued and it was submitted that village Rahuri was covered by Bombay Rent Act in the past and in view of the area to which new Act is applicable is given in the new Act Maharashtra Rent Control Act, the provision need to be applied. There is no necessity to go into the details of the legal point as the premises given was open space and there was condition as mentioned above. The circumstance about the mode of payment of rent is also mentioned and that is also relevant in the present matter. Thus, there is no force in the aforesaid new contention made first time in the second appeal.

10. Another point was argued by learned counsel for the Appellant. It was submitted that the agreement was of leave and licence though it was titled as lease and in view of the permission for construction given it needs to be

presumed that it was irrevocable licence. In support of this contention, reliance was placed on some cases reported as (i) **AIR 1987 SC 1424 (1) (Ram Sarup Gupta (dead) by L.Rs. V/s Bishun Narain Inter College and others)**, and (ii) **AIR 199 SC 2607 (Delta International Ltd. V/s Shyam Sundar Ganeriwalla and another)**. The facts and circumstances of those cases were totally different. The relevant facts of the present matter are already quoted and due to facts of the present matter this Court holds that it is not possible to infer that it was irrevocable licence. Such defence was also not taken in the pleading.

11. Reliance was placed on one case reported as **2009 (1) Mh.L.J. 263 (Damodhar Namdeo Sase (deceased through his Legal heirs) Chandrabhagabai W/o Damodhar Sase and others V/s Namdeo Baburao Sase** by learned counsel for the Appellants. It was submitted that in view of the observations made by this Court at para 19 the pleading needs to be construed liberally. This Court has already quoted the relevant portion of pleading and so it is not possible to construe, to say that the defendant was given permission to make construction of permanent

nature. There is no such specific pleading also. Thus, the observations made by this Court, in the case cited, are of no use.

12. The learned counsel for the Respondents placed reliance on some reported cases like (i) **2013 AIR SCW 2477 (Ram Bharosey Lal Gupta (D) by LRs. and Ors. V/s M/s. Hindustan Petroleum Corp. Ltd. and Anr.)**, (ii) **AIR 2005 SC 2905 (Shanti Prasad Devi and another V/s Shankar Mahto and others)**, (iii) **2010 (4) Mh.L.J. 55 (Manoramabai Wd/o Shamrao Saoji and others V/s Municipal Council, Saoner and another)**, (iv) **AIR 2014 Chhattisgarh 178 (M/s. Panch Raghou Taank Ramnivas Sarda and Co. V/s Hindustan Petroleum Corporation Ltd. and another)**, (v) **(2002) 3 KCCR 1691 (U.P.Jayaram V/s K. Leelavathi Rai Since dead by L.Rs.)**, (vi) **AIR 1965 S.C. 610 (Mrs. M. N. Clubwala and another V/s Fida Hussain Saheb and others)** and (vii) **2006 (4) Mh.L.J. 83 (Ramesh S/o Raghunath and others V/s Pandurangrao Ratnalikar and others)**. Submission was made by learned counsel for original plaintiff that there was no renewal of lease and nothing was paid after the expiry of lease and so even notice was not necessary of termination of tenancy.

Such observations are made by the Apex Court in the cases cited for Respondents. There cannot be any dispute about the proposition of Supreme Court made in the cases cited supra. On the provisions of lease and licence also one case of Mrs. Clubwala was cited. This is with regard to the distinction between "lease" and "licence" and the requirement of notice. It is laid down that when it is a licence there is no necessity of notice. This point is not involved in the present matter. One case of this Court of Ramesh, cited supra, is on the provisions of Easements Act, 1882 (Section 60 (b)). In that case, the necessity for proving irrevocable licence is discussed and the three conditions which are required to be fulfilled are mentioned. One of the condition is that the work should be of permanent character. There cannot be any dispute over the proposition and the relevant facts of the present matter are discussed by this Court.

13. The findings of the Courts below are findings on questions of facts and they are on the basis of some admitted facts already quoted. No substantial questions of law as such are involved in the present matter.

14. In the result, appeal stands dismissed.

15. Learned counsel for appellants requested for time of one year for vacating the premises. Considering the fact that after the expiry of the lease period, no rent was paid, and the appellants continued possession and took false defence, such relief is refused.

16. In view of final disposal of the second appeal itself nothing further survives in Civil Application No.13004 of 2015 for stay and the same stands disposed of accordingly.

(T. V. NALAWADE, J.)

Dt.07/03/2016.
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