

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 489 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 136 OF 2016****IN****SECOND APPEAL NO. 489 OF 2015****Deepak Eknath Vazare****..... Appellant****VERSUS****Sarvajanik Gaonkari Panch Trust,
Mukhed & Ors.****..... Respondents**

Mr.Sachin Gite for the Appellant.

Mr.Tushar N.Sonawane for Respondent Nos. 2 and 3.

Mr.Jayram Shankar Aher, Respondent No.2 is present.

CORAM : R.D. DHANUKA, J.**DATED : 25th JANUARY, 2016****P.C.**

By this second appeal filed under section 100 of the code of Civil Procedure, 1908 the appellant (original defendant) has impugned the judgment delivered by the lower appellate court on 13th February, 2014 dismissing the appeal filed by the appellant. The appellant has challenged the order passed by the learned Civil Judge, Junior Division dated 29th July, 2006 who passed a decree in favour of the respondents (original plaintiffs) and directed the appellants to deliver vacant possession of the suit premises to the respondents within a period of two months from the date of the order and also an amount of Rs.660/- towards the amount of rent and the notice charges of Rs.225/-.

2. Learned counsel appearing for the appellant submits that the agreed rent by

the appellant to the respondent was only at the rate of Rs.10/- per month and not at the rate of Rs.50/- per month. It is submitted that there was no document produced by the respondents before the learned trial judge by which the rent of Rs.10/- p.m. was increased to Rs.50/- per month. He submits that since the respondent had demanded rent at the rate of Rs.50/- p.m. which demand was contrary to the terms and conditions of the tenancy, the notice itself being illegal, the learned trial judge could not have passed any order of eviction against the appellants on the grounds of arrears of rent.

3. Learned counsel appearing for the appellant invited my attention to the issues framed by the learned trial judge and the findings rendered thereon and would submit that the findings rendered by the learned trial judge and also by the lower appellate court are perverse and thus warrants interference under section 100 of the Code of Civil Procedure.

4. Learned counsel appearing for the respondents (original plaintiffs) on the other hand invited my attention to the concurrent findings recorded by the two courts below and submits that even if the agreed rent was considered as Rs.10/- per month, since the appellants were not regular in making payment even at the rate of Rs.10/-, the learned trial judge was justified in passing the decree of eviction and in rendering a finding on issue whether notice issued by the respondent was valid or not. He submits that the findings rendered by the learned trial judge has been upheld by the lower appellate court. He submits that since the findings rendered by the court are concurrent findings and are not perverse, the same cannot be interfered with under section 100 of the Code of Civil Procedure, 1908.

5. I have perused the findings rendered by the two courts below. Insofar as

submission of the learned counsel for the appellant that the agreed rent was not Rs.50/- but was at the rate of Rs.10/- is concerned, a perusal of the impugned order passed by the learned trial judge clearly indicates that the learned trial judge has rendered a finding of fact after considering oral and documentary evidence that even if the agreed rent was Rs.10/-, the appellant was not making payment of even Rs.10/- also regularly and had committed default.

6. Insofar as submission of the learned counsel for the appellant that the tenancy in favour of the appellant was from year to year and was not a monthly tenancy is concerned, both the courts below have rendered a finding that the tendency was for month to month and not yearly and thus provisions of 106 of Transfer of Property Act is attracted. A perusal of the record indicates that the appellant failed to prove before the learned trial judge that the tenancy was from year to year and not monthly.

7. In my view, the concurrent findings rendered by the court below are not perverse and thus cannot be interfered with under section 100 of the Code of Civil Procedure. There is no substantial question of law having arisen in this second appeal. The Appeal is devoid of merits and is accordingly dismissed. No order as to costs.

8. At this stage, learned counsel appearing for the appellant seeks time of six months for his client to vacate the suit premises. Learned counsel appearing for the respondents on instruction states that he has no objection if six months time is given to the appellant provided he submits an undertaking before this court that he would vacate the suit premises unconditionally on expiry of six months period and would not create any third party rights in respect of the suit property during this

period of six months. Statement made by both the learned counsel are accepted. Learned counsel for the appellant agrees to undertake on behalf of his client as suggested by the respondents.

9. The appellant is accordingly granted six months time to vacate on the condition that the appellant submits an undertaking before this court within within two weeks from today to the effect that he will not create any third party rights in respect of the suit premises in favour of any third party during this period of six months and would handover exclusive vacant and peaceful possession of the suit premises to the respondents on the expiry of six months. He should also mention in the undertaking that he will not apply for any extension of time to vacate after expiry of six months. The undertaking rendered by the learned counsel on behalf of his client is accepted. It is made clear that if the undertaking is not filed as directed aforesaid within the period of two weeks time, the respondents will be at liberty to execute the decree of the courts below.

10. In view of the statement made by the learned counsel for the respondents that his clients have no objections if six months time is granted to the appellant to vacate, it is made clear that the respondents shall not execute the decree for a period of six months unless the appellant does not file an undertaking before this court within two weeks from today.

11. In view of dismissal of the second appeal, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]