

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.503 OF 2016
WITH
CIVIL APPLICATION NO.1911 OF 2015
IN
SECOND APPEAL NO.503 OF 2016**

Mustaq Buranduddin Kazi ..Appellant
V/s.
Shri.Rajesh Suryakant Bidaye & Ors. .. Respondents

Mr.Manoj Patil for the Appellant.
Mr.Arun Jadhav for Respondent Nos.1 to 3.

CORAM : R.D. DHANUKA, J.

DATE : 15th NOVEMBER, 2016.

P.C.

1. By this petition filed under Section 100 of Code of Civil Procedure, 1908 the appellant (Original Defendant) has impugned the judgment and decree dated 27th July 2015 passed by the Learned District Judge-1, Sindhudurg dismissing the Regular Civil Appeal No.68 of 2011 filed by the appellant and confirming the judgment and decree passed by the learned Civil Judge Junior Division Malvan in Regular Civil Suit No.7 of 2000 dated 28th April 2011 thereby decreeing the suit for possession filed by the plaintiff against the defendant.

2. It is admitted position that there was no agreement entered into between the appellant and the respondent in respect of the Suit premises. It was the case of the Respondent (Original Plaintiff) that the suit property was given to the appellant on leave and license basis for conducting the business. It was the case of the appellant that the property was given on tenancy by the Respondent in favour of appellant.

3. With the assistance of the learned counsel appearing for both the parties and I have perused the oral and documentary evidence led by the parties before the learned Trial Judge. The learned Trial Judge framed six issues for determination.

4. After considering the documentary and oral evidence, the learned Trial Judge held that the appellant could not produce the documentary evidence showing that he was a tenant in respect of the suit property and that the payment made by the appellant to the Respondent was rent. Appellant has also failed to produce any documentary evidence to show that the mother of the respondent has given other premises on the rental basis.

5. The learned counsel appearing for the appellant

vehemently submits that the Respondent has failed to prove that the appellant was the licensee and the onus had not been shifted. He submits that the witness produced by the Respondent had admitted that the keys of the suit premises was with the appellant and the electricity meter situated in the suit property was in the name of the appellant. He submits that the exclusive possession and control in respect of the suit premises was with the appellant. The learned counsel for the appellant held that the premises were given on tenancy and not on license.

6. It is submitted by the learned counsel for the appellant that the First Appellate Court has passed the judgment and decree confirming the decree passed by the Trial Court by reproducing the findings of the Trial Court in verbatim and not by appreciating the oral and documentary evidence. The learned counsel for the respondent on the other hand invited my attention to the evidence on record. He submits that the appellant had not filed any suit for declaration of his alleged tenancy in respect of the suit property. The appellant has not produced any documentary proof in support of his claim that the tenancy was created in favour of the appellant by the respondent, in respect of suit property. He submits that the findings of the Court below are concurrent findings and thus this Court

cannot interfere with such concurrent findings in this Second Appeal.

7. It is submitted that merely because the keys of the suit premises were with the appellant and electricity meter was in his name that itself would not constitute tenancy in favour of the appellant.

8. It is not in dispute that there was no written agreement executed between appellant and the respondent in respect of the suit property creating any tenancy. Perusal of the impugned judgment and decree passed by the learned Trial Judge indicates that after considering the oral and documentary evidence led by the parties, the learned Trial Judge has held that there was no tenancy created in respect of the suit property in favour of the appellant. The appellant has not produced any documentary evidence to show the tenancy. The appellant also could not produce any documentary evidence about the development made in the suit house, till the filing of the suit. It is held that the appellant was running the flour mill and haller and has kept pounding machine in the suit house. The mere statement of the rent was not sufficient to establish the relationship of landlord and tenant between the

parties.

9. In so far as the submission of the learned counsel for the appellant that the keys of the premises were with the appellant and the electricity meter was in the name of the appellant which would indicate that the appellant was the tenant in respect of the suit premises and not the licensee is concerned, the same itself is not sufficient to conclusively prove that the tenancy was created in favour of the appellant. Both the Courts have rightly held that intention of parties had to be considered. The appellant did not file any suit for declaration of alleged tenancy about suit property.

10. In so far as the submission of the learned counsel for the appellant that the findings recorded by the first Appellate Court are in verbatim and not rendered after considering the documentary and oral evidence independently is concerned, in my view since the first Appellate Court has confirmed the findings of the first Appellate Court in toto, separate exercise to appreciate the evidence was not necessary and the findings recorded by the Courts being concurrent cannot be interfered under Section 100. In any event the judgment and decree passed by the first Appellate Court does not indicate that findings of trial Court are adopted in verbatim. In my view there is

no substantial question of law arising in this appeal. The appeal is accordingly dismissed.

11. In view of the dismissal of the Second Appeal Civil Application does not survive. No order as to costs.

12. At the request of the learned counsel for the appellant the operation of the decree and judgment passed by the two courts below and this order is stayed for a period of eight weeks from today. Appellant shall not create any third party rights and hand over the possession of the suit property during the period of the stay granted by this Court to any third party.

(R.D. DHANUKA, J.)