

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

Second Appeal No.306 of 2015
(Magan Automobiles, through its Partner Gunwant Panchbhai Patel v.
Ashok Laxmanrao Krishnanani)

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

Dr. R.S. Sundaram, Advocate for Appellant.
Shri D.N. Dani, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 25th April, 2016

1. The Court of 2nd Joint Civil Judge, Senior Division, Nagpur, decided Special Civil Suit No.82 of 1997 filed by the respondent-plaintiff and passed a decree on 22-9-2009 directing the appellant-defendant to hand over the vacant possession of Shop No.2 on the ground floor of Nilgiri Building, bearing N.M.C. House No.234/002, constructed on Plot No.30, situated in Ward No.35, Hansapuri, Central Avenue Road, Nagpur, to the respondent-plaintiff within a period of two months from the date of the order. This was the subject-matter of challenge before the lower Appellate Court in Regular Civil Appeal No.529 of 2009. Pending the said appeal, the lower Appellate Court passed an order on 14-12-2012 calling for the findings from the Trial Court on the additional issues, which were framed. In response to the said order, the findings were recorded on the additional issues

by the Court of 7th Joint Civil Judge, Junior Division, Nagpur. Upon receipt of the findings, the lower Appellate Court decided Regular Civil Suit No.529 of 2009 maintaining the decision of the Trial Court and dismissing the appeal on 27-3-2015. Hence, the original defendant is before this Court in this second appeal against the concurrent findings of fact.

2. The Courts below are concurrent in holding that the suit at the instance of the respondent-plaintiff is maintainable and he is held to be the owner of the suit premises. The finding is recorded that the appellant-defendant has failed to pay the rent and has also failed to establish that the suit premises are governed by the provisions of the Slums Act. It is also the finding recorded that the appellant-defendant is the trespasser over the suit premises and hence the decree for possession has been passed and confirmed.

3. On 1-7-2015, the notice was made returnable and the interim order was granted. On 10-2-2016, this Court observed that the dispute is pending in the Court since 1988 and, therefore, the matter be fixed for final hearing. Accordingly, the matter is for final disposal at the stage of admission. The substantial question of law has not been framed till this date in the present appeal.

4. Dr. Sundaram, the learned counsel appearing for the appellant-defendant, has urged that the Courts below have committed an error in passing a decree for possession of the suit premises without there being any claim for declaration of title. The reliance is placed upon the decision of the Apex Court in the case of *Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs. and others*, reported in (2008) 4 SCC 594. He has also urged that the respondent-plaintiff claimed himself to be the owner of the suit premises as an adopted son of one Laxmandas, the original owner of the suit premises. He has further urged that the said adoption has not been established. He has also urged that the findings recorded by the Trial Court in the order dated 7-2-2014 were without jurisdiction, as it was the Court of Civil Judge, Senior Division, which was required to consider recording of findings in terms of the order dated 14-12-2012 passed by the lower Appellate Court.

5. The undisputed factual position is as under :

One Laxmandas was the allottee in respect of the shop in question and the appellant-defendant was his tenant. The relationship of 'landlord' and 'tenant' between Laxmandas and the appellant-defendant has been accepted. Laxmandas died on 2-3-1987 and his wife was pre-deceased. The only heir of Laxmandas was Smt. Mohinibai, and the respondent-plaintiff is

the son of Smt. Mohinibai, who claimed to be the adopted son of Laxmandas, the maternal grandfather.

6. The respondent-plaintiff has examined Smt. Mohinibai, who has supported the claim of the respondent-plaintiff having become the owner of the suit premises by virtue of his adoption by Laxmandas. Initially, after the death of Laxmandas, the respondent-plaintiff initiated the proceedings under the provisions of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 for claiming arrears of rent and for grant of permission to determine the tenancy. In response to such proceedings, the stand was taken by the appellant-defendant that the respondent-plaintiff had no title over the suit premises and there was no relationship of 'landlord' and 'tenant' between the respondent-plaintiff and him. The respondent-plaintiff withdrew the said proceedings and served the notice upon the appellant-defendant for eviction and possession of the suit premises on the ground of forfeiture of tenancy under Section 111(g) of the Transfer of Property Act, 1882, which was not responded by the appellant-defendant. Consequently, the present suit was filed on 16-1-1997 for the said ground.

7. The contention of Dr. Sundaram, the learned counsel for the appellant-defendant, that the suit in question was not for possession on the ground of forfeiture of tenancy, but was based

upon the title of the respondent-plaintiff for possession, cannot be accepted. The adoption of the respondent-plaintiff as the son of Laxmandas, the original owner, has not been disputed by the sole surviving heir of Laxmandas, viz. Smt. Mohinibai, the mother the respondent-plaintiff, who has entered the witness-box. The appellant-defendant is not claiming title over the suit premises, and in view of this, no substantial question of law arises for consideration by this Court upon the Courts below recording the finding on the assessment of the case that the ownership of the respondent-plaintiff has been established, in the suit between the landlord and tenant.

8. Since the suit in question is for eviction and possession on the ground of forfeiture of tenancy, the question of claiming declaration of title and then claiming a decree for possession, does not arise. The decision of the Apex Court in the case of *Anathula Sudhakar*, cited supra, has no application in the facts and circumstances of the case. The question of legality and validity of adoption cannot be gone into at the instance of the appellant-defendant by the Courts below in a suit for eviction and possession based on the ground of forfeiture of tenancy. There is no challenge to the finding of fact recorded by the Courts below on the aspect of incurring of forfeiture of tenancy by the appellant-defendant.

9. Thus, no substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar