

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

Writ Petition No.3657 of 2014
(Shri Kishore s/o Dattatray Deshpande v. Shri Gunwant s/o Jaishankar
Mehta)

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

Shri S.R. Deshpande, Advocate for Petitioner.
Shri Girish G. Kandhari, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.
Date : 22nd February, 2016

Special Civil Suit No.95 of 1998 for recovery of rent, was dismissed by the Trial Court on 23-8-2004. Regular Civil Appeal No.194 of 2004 has also been dismissed by the lower Appellate Court on 20-3-2014. Both the Courts have concurrently held that though the plaintiff has established ownership over the suit property on the basis of the registered sale-deed dated 9-2-1989 at Exhibit 34, the attornment of tenancy, as required by Section 109 of the Transfer of Property Act, has not been established. It was not a suit for eviction and possession, but was only for recovery of rent. Undisputedly, the rent was paid by the respondent-tenant to the erstwhile owner, viz. Dr. Balgovind Khapre from February 1985 till 1993. The Court has, therefore, held that in the absence of proof of attornment, the plaintiff, who has purchased the property on 9-2-1989, is not

entitled to recover the arrears of rent from the defendant.

No fault can be found with the view taken by the Courts below.

The petition is dismissed.

The order of payment of costs on earlier occasion, is recalled.

Judge.

Lanjewar