

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

Second Appeal No.501 of 2015
(Sharad s/o Shriram Tamhan v. Eknath s/o Wasudeorao Saraf)

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders
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Shri V.T. Deshpande, Advocate for Appellant.
Shri Rohit Joshi, Advocate for Respondent.

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

It is not disputed that Regular Civil Suit No.243 of 1988 was filed for eviction and possession against the appellant-tenant in respect of 1,600 sq.ft. of open plot out of plot No.3, totally admeasuring 4,266.5 sq.mtrs. It is also not in dispute that the appellant-tenant constructed temporary shed on the open plot in question after it was taken on lease. The provisions of the C.P. and Berar and Letting of Houses and Rent Control Order, 1949 were applicable on the date of filing of the suit, as by way of subsequent amendment, the open plot was also included within the definition of 'premises'. It is, therefore, undisputed position that the suit, as was instituted for eviction and possession on the basis of the notice under Section 106 of the Transfer of Property Act, 1882, could not have been decided by the Civil Court, as the jurisdiction was with the Court of Small Causes.

A decree was passed in the said suit on 6-1-2001, and by that time, the Maharashtra Rent Control Act, 1999 was brought into force. The said Act does not apply to the open site, and hence a suit for

eviction and possession in respect of the open plot was required to be filed only on the basis of Section 106 of the Transfer of Property Act, and the protection under the provisions of the Maharashtra Rent Control Act was not available. It is after coming into force of the Maharashtra Rent Control Act that the decree in Regular Civil Suit No.243 of 1988 was passed on 6-1-2001. In view of this, the question is whether the decree is liable to be set aside.

Merely because the construction was made on the open land obtained on lease, that would not convert the lease in respect of the open plot into the lease in respect of the premises constructed. The lease would remain in respect of the open plot only. In the decision of this Court in the case of *Radhakisan Ramnath Malpani v. Rajesh Dattatray Mahajan and others*, reported in 2013(4) *Mh.L.J.* 266, the first question considered was whether the suit between the landlord and tenant for eviction and possession in respect of the lease of the open land was required to be decided as per the law prevailing on the date of filing of the suit in view of the provision of Repeal and Saving contained in sub-section (2) of Section 58 of the Maharashtra Rent Control Act, 1999, and the another question considered was whether the ordinary jurisdiction of the Civil Court was available to pass a decree for eviction and possession after introduction of the amendment on 2-7-2005. This Court has held that the only remedy available was to file suit invoking the ordinary jurisdiction of the Civil Court for eviction of tenant and for possession under the general law of the Transfer of Property Act, and neither the provisions of the Rent Control Legislations nor the provisions of the Maharashtra Rent Control Act were applicable, as the lease in question was for the open

land. This Court has refused to set aside the decree passed for eviction and possession on the basis of the notice under Section 106 of the Transfer of Property Act. Similarly view has taken by this Court in the subsequent decision in the case of *Shri Anil Dhondu Shinde & Anr. v. Shri Govind Jagannath Samant (D), through LR & Ors.*, reported in 2014(6) ALL MR 575.

The matter is no longer res integra in view of the aforesaid decisions of this Court. Thus, no substantial question of law arises in this Court. The second appeal is dismissed.

The learned counsel for the appellant-defendant seeks three months' time to vacate the premises. The statement is accepted as an undertaking to this Court on behalf of the appellant-defendant, and if the premises are not vacated within a period of three months from today, the decree shall become executable immediately.

Judge.

CERTIFICATE

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