

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.162 OF 1992

Qamrunnisa Begum w/o. Abdul
Majeed Khan, Aged 60 years,
Occ. Household, r/o. Itwara,
Nanded (died),
through Legal representatives

A-1. Mohd Mumtazali Khan s/o.
Meraj Ali Khan @ Moin Ali Khan
Age : 26 years, Occ. Nil

A-2. Mohd. Ayub Khan
s/o. Meraj Ali Khan @
Moin Ali Khan
Age : 34 years, Occ. Nil

A-3. Ahmed Ali Khan
s/o. Meraj Ali Khan @
Moin Ali Khan,
Age : 22 years, Occ. Nil,

A-4. Mohd. Wahed Khan s/o.
Meraz Ali Khan,
Age : 20 years, Occ. Nil,

All r/o. Imran Colony,
Degloor Naka, Nanded

..Appellants

Vs.

1. M/s. Obed and Ahesan
Copper, Bras Merchant,
registered firm No.105/1979
through its partners

- A. Mohammed Omer s/o. Mohd. Sajan, age 50 years, Occ. Business, r/o. Itwara, Nanded
 - B. Mohd. Ahesan s/o. Mohd Fakir, Age 45 years, Occ. Business, r/o. Itwara, Nanded
 - C. Abdul Hai s/o. Haji Gulam Ahmed, Age 55 years, Occ. Business, r/o. Itwara, Nanded (died) through Lrs.
 - C-1. Anis Ahmad s/o. Abdul Hai, Age : 39 years, Occ. Labour, r/o. Mandhai, Nanded
 - C-2. Abdul Rafiq s/o. Abdul Hai, Age : 36 years, Occ. Labour r/o. Mandhai, Nanded, Tq. and Dist. Nanded
 - C-3. Rais Ahmad s/o. Abdul Hai, Age : 34 years, Occ. Labour, r/o. Mandhai, Nanded, Tq. and Dist. Nanded
 - 2. Meraj Ali Khan alias Moin Khan, s/o. Abdul Kajeed Khan, Age : 50 years, Occ. Business, r/o. Itwara, Nanded
- ..Respondents

Mr.A.G.Godhamgaonkar, Advocate for Appellants

Mr.Prashand Deshmukh, Advocate i/b.
Mr.S.S.Nirkhee, Advocate for respondent nos.1(i)
and 1(ii)

Mr.Amit Mukhedkar, Advocate for respondent
nos.1A(a) to 1A(7) and 1B

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CORAM : SANGITRAO S. PATIL, J.

DATE : JULY 18, 2017

ORAL JUDGMENT :

The original plaintiff has preferred this Second Appeal against the judgment and decree dated 05.10.1991 passed in R.C.A. No.187 of 1986 by the learned 3rd Additional District Judge, Nanded, whereby the appeal was partly allowed and the judgment and decree passed by the trial Court on 30.08.1986 in R.C.S. No.587 of 1982 directing the deceased respondent no.1 to deliver possession of the suit premises to the original plaintiff, came to be dismissed.

2. Heard the learned Counsel for the legal representatives of the deceased appellant and the legal representatives of the deceased respondent

no.1 (original defendant no.1). The learned Counsel for the appellant submits that though respondent no.2 was the son of the deceased appellant, he had no authority to let out the suit premises to the deceased respondent no.1, however, the learned Judge of the first appellate Court merely on surmises and conjectures, held that the deceased appellant, being a Pardanashin lady, had authorised respondent no.2 to look after the shop premises and being as an agent of the deceased appellant, respondent no.2 let out the suit premises to the deceased respondent no.1. He submits that this finding is perverse and therefore, the Second Appeal will have to be admitted to decide the question, as to whether respondent no.2 was authorised to let out the suit premises to respondent no.1 as an agent of the deceased appellant. He pointed out to Grounds 7, 9 and 10 of the appeal memo, which, in fact, revolve around this point.

3. On the other hand, the learned Counsel for the deceased respondent no.1 submits that the deceased appellant herself has admitted in paragraph 4 of the plaint that she being an old and Pardanashin lady, her son i.e. respondent no.2 was looking after the management of the shop as per her direction. He further points out to the fact that the deceased appellant and respondent no.2 were residing together and were joint in all respects. Therefore, the learned Judge of the first appellate Court rightly inferred that respondent no.2 acted as an agent of the deceased appellant. Being her family member, residing with her and looking after her shop premises, he let out the said premises to respondent no.1. He submits that respondent no.2 did not participate the suit to resist the claim of the appellant and this fact itself, is sufficient to indicate that the suit was collusive. The learned Judge of the first appellate Court has rightly characterised the suit as collusive one,

with a view to obtain possession of the suit premises without following the procedure laid down in the Rent Control Act for recovery of possession of the tenanted premises from respondent no.1. He then submits that after the demise of the appellant, respondent no.2 filed a suit for recovery of possession of the suit premises from the deceased respondent no.1 under the provisions of the Rent Control Act and the same is pending. He submits that in view of this factual position, the judgment of the first appellate Court cannot be said to be perverse. There is no substantial question of law involved in this appeal.

4. Indeed, in paragraph 4 of the plaint, the deceased appellant herself mentioned that respondent no.2 who is her son, was looking after the management of her shop she being an old and Pardanashin lady. Since the deceased appellant was a Pardanashin lady and was an old woman and since respondent no.2 was looking after the management of

the shop, it was quite natural that on the instructions of the deceased appellant, he let out the suit premises to the deceased respondent no.1. There is no dispute that the deceased appellant and respondent no.2 were residing together. They had common interests. In the circumstances, the case of the appellant that respondent no.2, without her consent and authority, let out the suit premises to respondent no.1 cannot be believed. The learned Judge of the first appellate Court has rightly drawn inference about the nature of the suit on the basis of the relations between the deceased appellant and respondent no.2. The fact of institution of a suit for recovery of the suit premises under the Rent Control Act, ratifies the findings of the learned Judge of the first appellate Court about collusive nature of the suit filed with a view to circumvent the provisions of the Rent Control Act for getting possession of the suit premises. In the circumstances, it cannot be

said that the findings of the learned Judge of the first appellate Court about collusive nature of the suit as well as about authority of respondent no.2 to let out the suit premises to the deceased respondent no.1, with the consent of the deceased appellant, cannot be said to be merely on the basis of the surmises and conjectures. Even otherwise, those are the factual aspects of the matter. The learned Judge of the first appellate Court has rightly considered the facts of the case as well as the evidence on record and has rightly dismissed the claim of the deceased appellant for recovery of possession of the suit premises.

5. I do not find any substantial question of law involved in this appeal. Hence, order :-

- (i) The Second Appeal is dismissed.
- (ii) No costs.

[SANGITRAO S. PATIL, J.]