

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

SECOND APPEAL NO. 782 OF 2017
WITH
CIVIL APPLICATION NO.15224 OF 2017
IN SA/782/2017

SHAIKH IQBAL SHAIKH KATTU
VERSUS
THE EXECUTIVE ENGINEER, BASMATNAGAR AND ANOTHER

...
Advocate for the Appellant : Shri Pathan Hamzakhan I..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2017

Per Court:

1 The Appellant is aggrieved by the judgment of the Appellate Court dated 03.11.2017 by which, the judgment of the Trial Court dated 21.07.2014 delivered in RCS No.221/2010 has been quashed and set aside and the suit has been dismissed.

2 The contention of the Appellant is that he has acquired the lawful possession of the suit property of the State. He was running a canteen in the premises of the Purna Irrigation Department, Basmatnagar, Taluka Basmat, District Hingoli. The suit property admeasures 30 x 40 feet and the Appellant claims to be paying the rent at the rate of Rs.30/- per month initially and which was later on increased to Rs.501/- per month.

3 When the State Authorities called upon the Appellant to vacate the premises, he preferred RCS No.221/2010 claiming injunction against the State and for restraining them from interfering with his possession and from removing his canteen. The Trial Court, by judgment dated 21.07.2014, concluded that the Defendants are at liberty to remove the possession of the Plaintiff by removing his canteen from the suit property by following the due process of law. The grievance is that the Appellate Court has allowed RCA No.14/2014 filed by the Defendants and has quashed and set aside the judgment of the Trial Court and has dismissed the suit.

4 I have considered the strenuous submissions of the learned Advocate for the Appellant/ original Plaintiff. The contention is that though no lease agreement was brought on record, there was one letter dated 07.10.2010 issued by the Defendants to the Plaintiff to seek renewal of the lease agreement, which has expired on 20.02.2008 and deposit the arrears of rent. It is claimed that the arrears of rent have been deposited.

5 It is further contended that whether, the Plaintiff has a valid lease agreement or not and whether, the Plaintiff is an encroacher or not, the State has to follow the due procedure for seeking eviction of the Plaintiff.

6 I find from the judgment of the Appellate Court that there was no documentary evidence, which would conclude the point as to

whether, the Plaintiff was lawfully put in possession of the suit property. It appears that he was allowed to run the canteen and he used to deposit the amount, which is said to be Rs.30/- per month initially and thereafter, Rs.501/- per month. The issue as to whether, the Plaintiff has been put in lawful possession, was neither concluded by the Trial Court, nor did the Appellate Court find any material to draw such a conclusion.

7 In the absence of documentary evidence to establish that the Plaintiff was lawfully put in possession of the property and he lawfully held the possession on the basis of certain documents, which were executed by the State, it cannot be said that the Plaintiff has right to continue in the suit property.

8 Considering the above, I find that no substantial question of law has been pointed out or could be formulated. The Second Appeal being devoid of merit, stands dismissed.

9 Consequentially, the Civil Application does not survive and stands disposed of.

10 At this juncture, Shri Pathan, learned Advocate for the Appellant/ original Plaintiff, after seeking liberty of a pass-over, makes a statement, on telephonic instructions received from the Appellant, that the Appellant would vacate the suit premises within six weeks from today, shall not claim any rights over the suit premises and may apply in the tendering process to run a canteen in the new premises.

11 By recording the above statement, the Appellant is directed to file a specific affidavit in this Court on or before 29.12.2017 to indicate that he will vacate the suit premises on or before 03.02.2018.

12 If such an affidavit is not filed on or before 29.12.2017 in the Registry of this Court, this order shall take effect immediately and the original Defendants/ State would be at liberty to remove the Plaintiff from the suit premises.

kps

(RAVINDRA V. GHUGE, J.)