

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL (STAMP) NO.797 OF 2017****WITH****CIVIL APPLICATION NO.200 OF 2017****IN****SECOND APPEAL (STAMP) NO.797 OF 2017**

Rajaram Govind Naik
(Deceased) Thr. heirs

...Appellants

vs.

The Kolhapur Sports Association

...Respondent

....

Mr. Rajesh Kachare, a/w. Mr. Manish Upadhye and Ms. Madhuri Ravuri,
for the Appellants.

Mr. A.M. Adagule, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 2 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal impugns a judgment and order passed by the District Court at Kolhapur in Regular Civil Appeal No.147 of 2011. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellants herein and confirmed the decree of redemption of mortgage passed by the Trial Court in favour of the Respondents.

3. The Respondents (Original Plaintiffs), who are trustees of a

public trust, are owners of the suit property. The suit property consists of open space admeasuring about 6160 sq. ft. housing a marriage venue known as “Jyoti Mangal Karyalay”. It is their case that in 1972 the suit property was mortgaged by them to the predecessor in title of the Appellants (Original Defendant) for Rs.40,000/-. The period of mortgage was of five years. It is their case that, after the expiry of this period, the Defendant refused to handover possession of the suit property. The Plaintiffs, in the premises, filed the present suit for redemption of mortgage. The Trial Court decreed the Plaintiff's suit directing redemption of mortgage on payment of Rs.40,000/- by the Plaintiffs and called upon the successors of the original Defendant to execute a deed of re-conveyance. This decree was confirmed in appeal by the first Appellate Court.

4. It is submitted by learned Counsel for the Appellants that the courts below have not properly considered the Defendant's case of tenancy. It is submitted that even prior to the deed of mortgage, the original Defendant was a tenant in respect of the suit property. It is submitted that even if the mortgage was liable to be redeemed against payment of the mortgage money of Rs.40,000/-, the tenancy of the original Defendant, and through him of the Appellants herein, would continue after such redemption. It is submitted that this tenancy has not merged into the mortgage so as to enable the mortgagor landlord to recover possession of the mortgaged property. It is submitted that, after redemption of mortgage, the Appellants would continue in their capacity as successors in interest of the original tenant.

5. Learned Counsel for the Appellants has tendered additional questions of law in this behalf, which are taken on record marked "X" for identification. The Appellants are permitted to amend the Second Appeal by incorporating the additional law points handed in and marked "X" for identification. The Second Appeal is considered on the footing that these questions of law form part of the Second Appeal.

6. The question as to whether the original Defendant was a tenant of the Plaintiff trust even prior to coming into possession of the suit property as a mortgagee under the deed of mortgage dated 30 September 1982, is a pure question of fact. The case pleaded by the original Defendant in his written statement before the Trial Court was that the mortgage deed was never intended to be a mortgage deed, but what was intended was to create a lease in favour of the Defendant and that the amount of Rs.40,000/- deposited by the Defendants in the Plaintiffs was only by way of a security. It was submitted that the Plaintiffs agreed to continue the lease of the suit property, by treating this amount of Rs.40,000/- as rent. The suit for redemption of mortgage was originally defended on this ground. After the death of the original Defendant, the Appellants herein, who were brought on record as Defendant No.1A to 1C filed an additional written statement. In this written statement, they took a stand that the suit property was in possession of the original Defendant for his business from 1961 as a tenant and that the Defendant used to store the material of his business "Kanchanmala Decoration" in the suit property. It was submitted that the Defendant had paid rent from time to time and the Plaintiffs had issued rent receipts on various dates, including 4/9/1980, 26/5/1981,

18/11/1980 and 31/3/1982. It was also submitted that the Defendant had deposited a sum of Rs.15,000/- towards this tenancy. Learned Counsel drew my attention to various documents in support of these contentions. The documents show that the sum of Rs.15,000/- was deposited as a fixed deposit by the original Defendant with the Plaintiff trust and that the alleged receipts referred to by the Defendant were receipts of interest on the fixed deposit. None of these receipts can be termed as acknowledgements by the Plaintiff trust as and by way of rent receipts. The courts below relying on the oral and documentary evidence before them, did not accept them as rent receipts. The oral evidence of Defendant No.1(b) was to the effect that the original Defendant was the servant of the Plaintiff trust; that he served the trust honestly till his demise. The so called possession of the Defendant of the suit property was termed as permissive, whilst the relationship between the Plaintiff's trust and the original Defendant was termed as a master and servant relationship, on the basis of the evidence before the courts below. The courts below also relied on the admissions of Defendant No.1(b) that the mortgage deed was executed, specifying a period of five years for which possession was given to the original Defendant and that during this period the Defendant erected a temporary shed in the property, where he stored his goods. Analyzing the pleadings and evidence before them, both courts came to a concurrent finding of fact that there was no lease of the suit property in favour of the Defendant, but that he was in possession thereof as a mortgagee. These conclusions of fact do not give rise to any substantial question of law. The conclusions cannot be said to be based on no evidence, or non-consideration of any germane or relevant material, or consideration of any non-germane or irrelevant

material. The conclusions are all possible conclusions, which are supported by evidence.

7. The Second Appeal, accordingly, has no merit and is dismissed. No order as to costs.

8. Learned Counsel for the Appellants prays for stay of the execution of the impugned judgment and order. He submits that earlier a statement was made on behalf of the Respondents that they would not execute the decree. The Respondents' suit having been decreed by the Trial Court and the decree confirmed by the Appeal Court, and the second appeal herein being summarily dismissed by this Court on the ground that it does not give rise to any substantial question of law, there is no reason for granting any interim stay of the impugned judgment and decree. The application for stay is rejected.

9. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also dismissed.

(S.C. GUPTE, J.)