

District Nashik, whereby the suit filed by the Respondent/Orig. Plaintiff was partly decreed and the Appellants/Orig. Defendants were directed to handover vacant possession of the suit property to the Respondent/original Plaintiff. The Appellants are hereinafter referred to as the Defendants and the Respondent as the Plaintiff.

2 The Plaintiff is the owner of the suit property viz. Land bearing CTS No.691/1 admeasuring 26 X 13 feet. It was the case of the Plaintiff that the suit property was given to the Defendants on rent at the rate of Rs.25/- per month. The Plaintiff issued a notice to quit to Defendants dated 23.07.2009 and sought possession and demanded the outstanding amount of rent. The Plaintiff thereafter filed suit against the Defendants for possession and recovery of arrears of rent. It was contended on behalf of the Plaintiff before the Trial Court that the suit is governed by Transfer of Property Act as the suit property is an open land and Maharashtra Rent Control Act would not be applicable as Section 7(9) of the Maharashtra Rent Control Act,

1947 which defines the term 'premises' does not include open land.

3 The Defendants had filed written statement contending that from time to time they have sent money orders to Plaintiff, however, same was refused by the Plaintiff. They were running Hotel in the suit premises from last 42 to 45 years which was their only source of income. It was pointed out that the Plaintiff had earlier filed Regular Civil Suit No.115/1987 on the ground that Defendants had encroached upon the suit property by erecting one 'Tapari' on it. It was contended that the suit premises would be governed by the Maharashtra Rent Control Act.

4. The Trial Court adverted to the definition of the term 'premises' in Section 7(9) of the Maharashtra Rent Control Act. It reads as follows:-

“As per supra Section “Premises”, means any building or part of a building let or given on license separately (other than a farm building) including-

(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house.”

(emphasis supplied)

5. The Trial Court held that open land without any building on it cannot come within the purview of definition of premise and held that the Maharashtra Rent Control Act was not applicable. The Trial Court noted that in the cross-examination Defendant had admitted the fact that it was an open plot of land which was let. The Trial Court arrived at a finding that the 'Tapari' was a temporary shelter/structure and observed that by no stretch of imagination that could be termed as permanent structure and said Tapari was not a building within the meaning of the definition of Section 7(9) of the Maharashtra Rent Control Act and the suit property was an open land. The Trial Court concluded that the Plaintiff would be entitled to possession, if the provision of Section 106 of Transfer of Property Act is complied with, under which a tenancy can be

terminated by giving 15 days written notice and the only requirement for a decree of eviction is that the notice under Section 106 of Transfer of Property Act was required to be served on the other party. The Trial Court found that the notice dated 23.07.2009 was issued and the Defendant had admitted that he has received the notice from the Plaintiff and had replied to the same vide reply dated 21.08.2009 and the provision of Section 106 was complied with and tenancy was determined vide Section 111(h) of Transfer of Property Act. The Trial Court further found no merit in the contention on behalf of the Counsel for the Defendant that in view of the earlier Regular Civil Suit No.115 of 1987, the present suit would not be maintainable. The Trial Court observed that the previous suit was in respect of removal of encroachment made by Defendant over the open land demised to Defendant. The Trial Court accordingly decreed the suit.

6. Aggrieved by this judgment and order of the Trial Court, Appellants filed the Appeal before the District Court. The

District Court also found that there was a categorical admission by the Defendants that the suit property was an open plot without having any permanent structure and agreed with the findings of the Trial Court and dismissed the Appeal.

7. Heard the learned Senior Counsel for the Appellants and the learned Counsel for the Respondent.

8. Learned Senior Counsel for the Appellants pointed out that the Trial Court did not appreciate the fact that there was a Tapari in the suit property and therefore, the Maharashtra Rent Control Act would be applicable as the Tapari would come within the definition of the term 'premises' under Section 7(9) of the Maharashtra Rent Control Act and the Appellants are protected under the Maharashtra Rent Control Act. He further submitted that in view of the earlier suit filed by the Respondent, the suit is not maintainable. The learned Counsel for the Respondents, on the other hand, pointed out that the admission on the part of the Defendants that what was let to the Defendants was an open land and at that time there was no

Tapari and that the said Tapari put up by the Appellants was not a permanent structure. He further pointed that the earlier suit was filed on a different cause of action.

9. Having heard the learned Counsel for the parties and on perusal of the material on record, I find that both the Courts had arrived at a finding of fact that what was let out by the Plaintiff to the Defendants was open land and the Tapari was merely a temporary structure/shelter put up by the Defendants. The Defendants in their evidence have admitted that what was let out to them was an open plot of land and that the Tapari was not a permanent structure. The Defendants in these circumstances cannot claim the benefit of protection of the Maharashtra Rent Control Act. It was rightly observed by the Courts below that the Defendants were served with the notice to quit dated 27.07.2009 and the same was replied by the Defendants and the provisions of section 106(1) of the Transfer of Property Act were complied with and the Courts below rightly concluded that section 7(9) of the Maharashtra Rent Control Act

was not applicable. The earlier suit filed by the Plaintiff was on a different cause of action and dismissal of that suit could not come in the way of decreeing the present suit. The suit was therefore rightly decreed by the Trial Court and affirmed by the Lower Appellate Court. The Trial Court and Lower Appellate Court on the basis of the evidence on record had arrived at concurrent findings of fact as regards the demise of open land and as regards the temporary nature of the Tapari.

10 In my view, the Second Appeal raises no substantial question of law. The Second Appeal is, therefore, dismissed. There shall be no order as to costs.

11. The Civil Application does not survive and to stand disposed of.

12. On the request of the learned Senior Counsel for the Appellants it is directed that final order in the Execution Proceedings shall not be passed for a period of four weeks. The learned Senior Counsel for the Appellants states on instructions

that Appellants shall not create third party rights in respect of the suit land. The statement is accepted.

[A. A. SAYED, J.]