

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

SECOND APPEAL NO.181 OF 2017

MOHD. SADIK S/O SK. KISAM
VS
RAVINDARSINGH ARUNSINGH KEER

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri U.J. Deshpande, Advocate for the appellant.
Shri Dr. Anjan De, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 6, 2017.

The appellant is the original defendant who is aggrieved by the decree for possession passed by the trial Court that has been affirmed by the appellate Court.

It is the case of the respondent – plaintiff that the suit property was purchased by him on 5-2-2002. The vendors of the plaintiff had in turn purchased the suit property from one Govind Andhale on 18-10-1997. One Sk. Kasam was the tenant of the property at that point of time and after his death, it was in occupation of one Sk. Hasan. Said Sk. Hasan had surrendered the tenancy and had delivered possession to Govind Andhale. As the appellant was in possession of the property without any legal right suit

for possession came to be filed. The appellant refused to accept the suit summons and hence, the suit proceeded exparte. The trial Court held that the title of the plaintiff was proved and on that basis decreed the suit. The appellate Court maintained the said decree.

Shri U. J. Deshpande, learned Counsel for the appellant submitted that the appellant was the son of the original tenant Sk. Kasam and, therefore, he had legal right to continue in possession. His tenancy was never determined and the deed of surrender executed by Sk. Hasan was not binding on him. He referred to provisions of Section 7(15) of the Maharashtra Rent Control Act, 1999 in that regard. He submitted that on this count, the decree passed by the trial Court was liable to be set aside though it was exparte in nature.

Shri De, learned Counsel for the respondent supported the impugned judgments. According to him, considering the limited scope of appeal in view of provisions of Section 96(2) of the Code of Civil Procedure, 1908, all these aspects do not deserve to be gone into. The plea as raised with regard to tenancy does not at all arise.

After hearing the learned Counsel for the parties and after perusing the material on record, I do not find that both the Courts committed any error in decreeing the suit. It

has been found by the trial Court that the original owner Govind Andhale obtained surrender deed from the legal heirs of the original tenant and he was then put in possession. The stand of the appellant that being the son of the original tenant he had legal right of tenancy cannot be accepted as there is no challenge to the tenancy surrender agreements at Exhibit 89 and 90 executed by S. K. Hasan. It is to be noted that the appellant chose to file an appeal against the exparte decree and hence, the limitations prescribed under Section 96(2) of the Code for such challenge would apply. I find that the material on record in the form of documents of title and the surrender deeds are sufficient for passing a decree by the trial Court in favour of the respondent. Moreover, as per the suit summons at Exhibit-6 the appellant refused to accept the same which was treated as proper service by the trial Court.

In the light of these findings, I find that the second appeal does not give any rise to substantial question of law. The second appeal is therefore dismissed. No costs.

JUDGE