

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

SECOND APPEAL NO.212 OF 2017

DAYACHAND S/O MUSADDILAL GUPTA
VS
SUDHIR S/O ANANDRAO MUDHOLKAR

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

Court's or Judge's orders

Shri S. A. Mohta, Advocate for the appellant.
Shri N. R. Kanungo, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 4, 2017.

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

It is the case of the respondent – plaintiff that on 28-3-1985 an agreement was entered into with the defendant by which he was permitted to construct a temporary structure on land admeasuring about 500 square feet. The lease was granted for being used as a store room. In the said agreement, it was stipulated that the construction would be of a temporary nature and that at the end of the lease period which was for eight years, the said structure would be removed and vacant possession of the open plot would be given. As the defendant did not vacate the suit property after

issuing notice, suit for eviction came to be filed.

In the written statement, it was pleaded that pursuant to the aforesaid agreement the defendant had carried out construction of a permanent character after obtaining permission from the Municipal Council. It was pleaded that the defendant had become tenant of the premises and had protection of the Maharashtra Rent Control Act, 1999.

The trial Court after considering the evidence on record came to the conclusion that the tenancy of the defendant had been validly terminated and there was no license to undertake any permanent construction. On that basis the suit was decreed. The appeal filed by the defendant was also dismissed.

Shri S. A. Mohta, learned Counsel for the appellant submitted that in terms of the agreement at Exhibit-18, the defendant was permitted to erect a structure for being used as a store room. He submitted that it was specifically pleaded in the written statement that a permanent structure had been carried out and therefore the license was a irrevocable under Section 60(b) of the Easements Act. He submitted that both the Courts erred in holding that under the agreement at Exhibit-18 only a temporary structure was to be erected. According to him, after obtaining permission

from the Municipal Council and on the basis of a subsequent oral agreement, the defendant had undertaken the permanent construction. Having permitted the defendant to undertake the construction it was not open for the plaintiff to urge that the license was liable to be revoked. He placed reliance in *Dwarka S/o Kaludin Ahir v. Gourishankar Thakur S/o Sunder* AIR 1943 Nagpur 77 and *Ram Sarup Gupta v. Bishun Narain Inter College and others* AIR 1987 SC 1242.

Shri N. R. Kanungo, learned Counsel for the defendant supported the impugned judgment. According to him, the terms of the lease agreement were clear and only a temporary structure could have been erected. He submitted that despite the clear stipulation, the defendant erected a permanent structure. This was contrary to the terms of the license and therefore no benefit could be claimed of the provisions of Section 60(b) of the Easements Act. He submitted that the oral agreement of 1993 was not duly proved and therefore the decree for possession was rightly passed.

I have heard the learned Counsel for the parties at length and perused the impugned judgments. As per the agreement at Exhibit-18, the open plot was leased out for period of eight years with a stipulation that a temporary structure would be erected by the defendant for operating a

store room. As per clause 5 thereof, on the expiry of the period of eight years, vacant possession was to be given by the defendant after removing the temporary structure. According to the defendant, after the expiry of the period of eight years, in the year 1993 there was a further oral agreement which permitted the defendant to continue in possession. Under provisions of Section 60(b) of the said Act, if a work has been executed acting upon the license which is of a permanent character, the license is not liable to be revoked. The material term “acting upon the license” therefore, indicates the importance to the agreement. On a reading of the entire agreement, the intention is clear that permission was granted only for erecting a temporary structure which was to be removed after expiry of the lease period. The further oral agreement that was pleaded by the defendant to justify erection of the permanent structure has not been proved by the defendant. In *Bhaurao v Geetabau* 2013 (4) *Mh.L.J.* 196, after considering the provisions of Section 60 of the said Act, it has been held that if there is failure to prove that the construction was while acting under the license then merely because the structure was permanent, the same would not be sufficient to hold the license irrevocable. The decision in *Jaswant Raj Soni (supra)* relied upon by the learned Counsel for the appellants is clearly

distinguishable on facts. In the said case the license was granted in the year 1939 for the purposes of running a school. The construction was carried out on that basis and in that view of the matter, the license was held to be revocable. Similarly, in *Dwarka Ahir (supra)*, the license was granted for residential use. On consideration of the entire agreement at Exhibit-18, it is clear that the intention was only to grant the license for erecting a temporary structure.

Both the Courts after taking into consideration the evidence of the parties have held in favour of the plaintiff. Mere construction of permanent structure contrary to the agreement of lease is not sufficient to contend that the license was irrevocable. In my view the suit has been rightly decreed. Hence, no substantial question of law arises. The second appeal is therefore dismissed. No costs.

JUDGE