

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

Writ Petition No. 3971 of 2015

Shri Narendra s/o Sadashiv Dalvi

V/s

Wasudeo Atmaram Borkute (Dead) Durgabai wd/o Wasudeo Borkute & 4 others.

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

Court's or Judge's orders

Shri A.R. Prasad, Advocate for the petitioner.

Shri A.M. Ghare, Advocate for the Respondent No. 1,2,4 and 5.

CORAM : Z.A. HAQ, J.

DATED : 07/11/2017

Heard.

1. The petitioner / original defendant has suffered decree for eviction and possession and the judgment passed by the District Court granting decree is challenged in this petition.

2. The respondents/plaintiffs filed civil suit praying for decree for eviction, possession, arrears of rent and inquiry into mense profits. According to the plaintiffs, the defendant was the tenant; he was in arrears of rent from 01/04/2003 till 31/12/2004 and had not paid the arrears of rent in spite of service of notice on him demanding rent. The plaintiffs further

claimed possession of the suit property on the ground that they require it for their own use.

3. The defendant opposed the claim of the plaintiffs contending that the plaintiffs entered into an agreement to sale the suit property with Smt. Shobha Kashikar, the agreement having been executed on 02/02/1998 and on execution of the agreement to sell, the plaintiffs lost their status as landlord and had no right to claim rent from the defendant. The defendant opposed the claim of the plaintiffs for possession of the suit property on the ground of bonafide requirement on the same contention that the plaintiffs were not landlord from 02/02/1998, after execution of agreement to sell.

4. The learned trial Judge conducted the trial and by the judgment dated 23/07/2009 dismissed the civil suit accepting the defence of defendant that the plaintiffs lost their status as landlord on execution of the agreement to

sell.

5. The plaintiffs challenged the judgment and decree passed by the trial Court before District Court in appeal which is allowed by the impugned judgment.

6. With the assistance of the learned Advocates for the respective parties, I have examined the documents placed on the record of the writ petition. I find that the learned District Judge has properly considered the evidence on record, rightly referred to the provisions of Section 55 (4) of the Transfer of Property Act and has rightly concluded that the defence raised by the defendant is unacceptable and the plaintiffs continued to be landlord even after 02/02/1998 and had not lost their status of landlord only because of execution of the agreement dated 02/02/1998. It is relevant to state that Smt. Shobha Kashikar had filed Regular civil suit No. 443/ 2001 against present respondents (plaintiffs)

praying for decree for specific performance of the agreement dated 02/02/1998. This civil suit was dismissed. The Appeal filed before the District Court has been dismissed and Second Appeal filed before this Court is also dismissed.

7. The contention of the defendant that he is entitled to continue in possession of the suit property as per Section 53-A of the Transfer of Property Act, being in occupation of the suit property alongwith Smt. Shobha Kashikar, is rightly repelled by the learned District Judge.

8. Undisputedly, the defendant has not paid anything towards rent to the plaintiffs after February-1998 on the specious ground that the plaintiffs had lost their status as landlord. The defendant failed to pay the arrears of rent even after service of notice demanding the arrears of rent. The defendant failed to deposit the amount of arrears of rent before the Trial Court after they appeared in the proceedings. There is no explanation as to

why the amount of arrears of rent was not deposited under protest and without prejudice to his contentions.

The defendant has committed default within the meaning of Section-15 of the Maharashtra Rent Control Act, 1999.

09. As far as bonafide need is concerned, the plaintiffs pleaded that they are residing in an apartment, three sons of plaintiff No.1 are married and therefore, the plaintiffs require the said premises for bonafide occupation. The learned District Judge has considered the point of bonafide requirement and hardship in the right perspective.

10. I do not find any illegality or perversity in the appreciation of evidence and law, by the learned District Judge. I see no reason to interfere with the impugned judgment and decree.

The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

Nandurkar