

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.501 of 2014
[Pradeep Hareshwar Ketkar Vs. Taty Tope Nagar Nagrik Mandal]

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

Court's or Judge's orders

Mr. S. A. Lambat, Adv., for the appellant.
Mr. S.S. Ghate, Adv., for respondent.

- - - -
CORAM : A. S. CHANDURKAR, J.

DATE : 24th July, 2017

In view of notice for final disposal issued earlier on substantial questions of law at Sr. Nos. [vi] and [vii] of the memorandum of appeal, the learned counsel for the parties have been heard at length.

The appellant is the original plaintiff who had filed suit for a declaration that he was entitled to occupy the suit property peacefully and that he could not be evicted without following the due process of law. According to the appellant, he was appointed as a priest in the temple being run by the respondent. This appointment was for a period 1st May, 2004 till 3rd April, 2005. After expiry of said period, the appellant continued to work as a priest and, therefore, he was entitled to continue in the premises. It is his further case that on 2nd April, 2008, he was called upon to give up his engagement and, therefore, he had filed

Complaint before the Labour Court challenging his termination as a priest.

The respondent filed its Written Statement and took the stand that appellant was permitted to act as a priest and in that connection, he was provided accommodation. It was denied that he was asked to submit his resignation. The respondent also filed a counter-claim claiming occupation charges from the appellant.

The trial Court dismissed the suit and allowed the counter-claim. The appellant was directed to pay occupation charges of Rs. 80,525/-. The first appellate Court maintained the dismissal of the suit, but set aside the counter-claim filed by the respondent.

Shri Lambat, learned counsel for the appellant, submitted that it was the case of the respondent in its counter-claim that accommodation was provided to the appellant in a gratuitous manner. Without issuing any notice to him, he was sought to be evicted. He submitted that such course could not be followed as the appellant was in possession since the year 2004. According to him, the issue pertaining to the plaintiff's engagement as priest could not have been gone into by the trial Court.

Shri Ghate, learned counsel for the respondent,

supported the impugned judgment. He submitted that it was admitted by the appellant that he was granted accommodation only by virtue of the services being rendered as a priest. He submitted that proceedings initiated before the Labour Court attained finality with dismissal of the Complaint. He, therefore, submitted that the respondent was entitled for possession.

Perused the impugned judgments.

In the proceedings initiated by the appellant before the Labour Court, he had taken the stand that as he was discharging duties as priest, he was given accommodation. He further admitted that on 30th April, 2005, his services came to an end. The challenge to the alleged resignation has attained finality and the appellant is no more in engagement with the respondent. This is in view of the adjudication of the proceedings filed by him before the Labour Court. It being his own case that he was put in possession by virtue of his services, it is clear that the entire basis for seeking protection from eviction does not survive. It was not necessary to issue a separate notice to the appellant before seeking his eviction, inasmuch as there was no relationship of landlord and tenant between the parties.

Hence, the substantial questions of law as framed are answered against the appellant. The Second Appeal

is, therefore, dismissed. No costs.

The appellant is granted time till end of September, 2017 to vacate the suit premises, subject to filing an undertaking in that regard in this Court within a period of three weeks from today.

Judge

|hedau|