

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

SECOND APPEAL NO.466 OF 2015

SHANTIBAI MOTILAL KANED (DEAD) THROUGH LEGAL HEIRS
VS
MAHENDRA SHRIRAMJI AMBARTE

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

Court's or Judge's orders

Shri N. R. Saboo, Advocate for the appellants.
Shri D. M. Upadhye, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 12, 2017.

Admit on the following substantial question of
law:

Whether the lower appellate Court was right in
reversing the decree passed by the trial Court, particularly
when the tenancy itself was frustrated on account of
demolition of entire structure and there was no relationship
of landlord and tenant or licence or licensee established
between the plaintiff and the defendant?

The appellants are the legal heirs of the original
plaintiff Shantabai who had filed suit for possession of the
suit premises against the respondent. It was the case of the
original plaintiff that one Dr. Shriram Ambarte was residing
in House No.224/1 as a tenant. As the suit house was in a
dilapidated condition he had vacated the same and had

shifted elsewhere. The respondent who was the son of Dr. Shriram encroached upon the tin shed on the open plot and refused to vacate the same. Hence, after giving notice to him, suit came to be filed for his eviction.

The original defendant filed his written statement. It was pleaded that his father Dr. Shriram had occupied the premises as a tenant. It was denied that the premises was in a dilapidated condition. As the defendant was residing with his father, he was entitled to occupy the same.

After the parties led evidence, the trial Court by its judgment dated 10-10-2008 decreed the suit by holding that the defendant had no independent right to occupy the premises in question. The temporary structure in possession of the defendant was without the consent of the original plaintiff. The appellate Court in the appeal preferred by the original defendant held that the plaintiff ought to have filed the suit for declaration that the tenancy of Dr. Shriram had come to an end and therefore he was a necessary party to the suit. On that count, the suit was dismissed for non-joinder of necessary parties. Being aggrieved, this appeal has been filed.

Shri N. R. Saboo, learned Counsel for the appellant submitted that after the tenanted premises were

vacated by Dr. Shriram, his son had taken possession of portion of the dilapidated structure and started residing there. He submitted that as the entire dilapidated structure was demolished in the year 2007 by the Municipal Corporation the tenancy rights of the original tenant came to an end. Relying upon the judgment of the Hon'ble Supreme Court in *Vannattankandy Ibrayi vs. Kunhabdulla Hajee* 2001 SAR (Civil) 90, it was submitted that on demolition of the tenanted house, the tenancy rights automatically came to an end. It was, therefore, not necessary for the appellate Court to have held that the original tenant was a necessary party,. The decree as passed by the trial Court was not liable to be reversed. He, therefore, submitted that the decree passed by the trial Court ought to be restored.

Shri D. M. Upadhye, learned Counsel for the respondent supported the impugned judgment. He submitted that the tenancy of Dr. Shriram was never terminated and, therefore, the appellate Court was justified in observing that he was a necessary party to the suit. According to him, the respondent was entitled to continue in occupation of the premises in question and the suit was rightly dismissed by the appellate Court.

I have heard the learned Counsel for the parties on the substantial question of law. According to the plaintiff,

the premises that had been let out to Dr. Shriram as a tenant had become dilapidated due to which the same was vacated by him. After shifting to another premises, the defendant who was the son of the original tenant encroached upon the temporary structure without any legal right. According to the plaintiff, the suit premises came to be demolished in the year 2007 as it was in a dilapidated condition and what remains was only a temporary structure. The fact that the premises were demolished in the year 2007 was admitted by the defendant in his cross-examination.

From the pleadings of the plaintiff, it can be seen that it was her specific case that the original tenant Dr. Shriram had vacated the house premises and had shifted elsewhere. The defendant in paragraph 6 of his written statement took the stand that he was not the tenant of the suit premises but his father was the tenant. On these pleadings it was clear that there was no relationship of landlord and tenant between the plaintiff and the defendant. No relief whatsoever was sought against Dr. Shriram and only the eviction of the defendant was sought. The appellate Court in para 14 of its judgment proceeded to hold that Dr. Shriram was a necessary party and he ought to have been joined as a defendant. A necessary party is one in whose absence no effective decree can be passed. Once it is found

that no relief was sought against Dr. Shriram and the prayer was only with regard to eviction of the defendant, it cannot be said that Dr. Shriram was a necessary party to the suit. The decree if passed would have been binding only on the defendant and not Dr. Shriram. The finding recorded by the appellate Court that Dr. Shriram was a necessary party and the same being the basis for dismissal of the suit is unsustainable. The reversal of the decree on that count alone is unsustainable. The substantial question of law as framed is necessary by holding that the appellate Court was not justified in reversing the decree passed by the trial Court on that count.

From the judgment of the appellate Court, it can be seen that it has proceeded principally on the basis that a necessary party was not joined. Once it is found that Dr. Shriram was not a necessary party, a fresh adjudication on merits by the appellate Court is warranted. It is therefore found necessary to remand the proceedings to the appellate Court.

In the result, the following order is passed:

ORDER

(1) The judgment of the appellate Court dated 29-6-2015 in Regular Civil Appeal No.31/2010 is quashed and set aside.

(2) The proceedings in Regular Civil Appeal No.31/2010 are restored before the appellate Court which shall decide the appeal afresh and in the light of aforesaid adjudication. As the appeal pertains to the year 2010, the same shall be decided expeditiously and by the end of December, 2017. The parties shall appear before the appellate Court on 07-08-2017.

(3) The second appeal is allowed in aforesaid terms.
No costs.

JUDGE

/MULEY/