

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

SECOND APPEAL NO. 356 OF 2004

1. Chandrappa Keshavappa Mudale
Died Through LR's
- 1/1. Parwatamma Chandrappa Mudale,
Age : 73 years, Occu : Household,
R/o. Latur.
- 1/2. Chidambar s/o. Chandrappa Mudale,
Age : 47 years, Occu : Labour,
R/o. Latur, District - Latur.
- 1/3. Swaruprani Manikant
Age : 45 years, Occu : Medical Practitioner,
R/o. Bangaloor (Karnataka).
- 1/4. Sashidhar s/o Chandrappa Mudale
Age : 73 years, Occu : Labour,
R/o. Latur, Dist. Latur

.. Appellants
(Orig. Plaintiff)

VERSUS

1. The Liquidator,
Co-Operative Oil Industries Limited,
Nanded Road, Latur.
2. Rajendra s/o. ____ Gilda (Deleted)
Age : 40 years, Occu : Business,
R/o

..Respondents
(Orig. Defendants)

...

Advocate for Appellants : Shri R.B. Deshmukh;
Advocate for Respondent No.1 : Shri S.R. Deshpande.

CORAM : PR. BORA, J.

Dated: August 02, 2018

ORAL JUDGMENT :

1. The appellant has challenged the Judgment and decree dated 25.11.2003 passed by the District Judge, Latur in Regular Civil Appeal No.207 of 2002. The present appellant had filed Regular Civil Suit No.582 of 1997 seeking perpetual injunction against the present respondents restraining them from interfering his possession over the suit premises. It was the contention of the appellant that, though initially the premises were allotted to him being an employee of the respondents, after his retirement, he continued with the possession of the said tenement in capacity of tenant. It was also his contention that, the respondents were regularly accepting the rent from him and were also issuing receipts therefor. In the circumstances, according to the appellant, the respondents could not have disturbed his possession without following due process of law.

2. The learned Civil Judge Jr. Division, Latur after having considered the evidence brought on record before him, dismissed the suit filed by the appellant holding that, the

plaintiff failed in proving that he was in lawful possession of the suit premises as a tenant of the respondent.

3. The appellant challenged the Judgment and decree passed by the Civil Judge, Jr. Division by filing Regular Civil Appeal No.207 of 2002 before the District Court. The learned District Judge had framed a specific point 'whether it is proved by the plaintiff that as a tenant, he is in possession of the suit premises' and the said point has been answered 'in negative'. The learned District Judge, therefore, has declined to cause interference in the Judgment and order passed by the Civil Judge, Junior Division.

4. The learned Counsel appearing for the appellant submitted that, both the Courts below have recorded the findings contrary to the evidence on record and as such, the findings so recorded have to be held as perverse and deserve to be set aside. The learned Counsel, taking me through the record of the case, submitted that the plaintiff had produced twelve rent receipts at Exhs.49 to 61. The learned Counsel submitted

that, all these receipts are pertaining to the period after retirement of the appellant. The learned Counsel submitted that, in some of the receipts, it is clearly mentioned that, the amount is accepted by way of rent, though in some of the receipts the particulars are stated as the expenses for *divabatti* etc. The learned Counsel submitted that, in the year-1988 the electricity supply was disconnected and the appellant was, therefore, required to approach the appropriate authority under the provisions of the Hyderabad Rent Control Act and in the said proceeding the respondent was directed to reconnect the electric supply. The learned Counsel further submitted that, the respondents did not challenge the said order. It was the contention of the learned Counsel that, by their conduct, the respondents did accept the appellant to be their tenant.

5. The learned Counsel further brought to my notice that, during pendency of the present appeal, one notice dated 11.04.2005 was served upon the present appellant. The learned Counsel invited my attention to the contents of the said notice to urge that, in the said notice the status of the appellant has been

stated to be a tenant in the property belonging to the respondent and it is also further clearly mentioned that, the premises which are in the possession of the appellant are allotted to him on rent. According to the learned Counsel, having considered the evidence on record as discussed above, no other conclusion could have been arrived at by the Courts below, except that the appellant is in possession of the suit premises as a tenant and no attempt, therefore, could have been made by the respondent to evict him from the said premises without following due process of law.

6. The learned Counsel for the appellant submitted that, since findings recorded by both the Courts below are contrary to the evidence on record, the interference is required by this Court in the said findings. The learned Counsel submitted that, the respondents did not even enter into the witness box so as to prove their defence that the appellant was not their tenant, but was inducted as an employee in the said premises.

7. Referring to Section 116 of the Transfer of Property Act, the learned Counsel submitted that, when the appellant remained in possession of the property after determination of the period, for which, he was inducted in the said premises and when the lessor has accepted the rent from him of the said premises of the said period, he could not have been evicted by the respondents without following due process of law.

8. For all these reasons, the learned Counsel prayed for setting aside the Judgments passed by the Courts below and to decree the suit filed by him.

9. Shri Deshpande, the learned Counsel appearing for the respondents supported the Judgments passed by the Courts below. The learned Counsel for the respondents submitted that, in the instant matter, both the Courts have recorded a concurrent finding that, the appellant has failed in proving that, he was having any legal right to retain the possession of the suit property. The learned Counsel further submitted that, the Society in the meanwhile went in liquidation and several

subsequent events had occurred. It is further contended that, the production had stopped way back in the year 1977 and thereafter the process for winding of the business of the Society was initiated. The learned Counsel submitted that, in the circumstances, inadvertently the notice in the format, as was issued to the other tenement holders seems to have been issued to the present appellant, but he cannot take undue advantage of the mistake so occurred. The learned Counsel submitted that, the fact that the appellant was inducted in the suit premises being an employee of the respondent has been undoubtedly proved and as such, the appellant was not entitled for the relief of perpetual injunction as was sought by him and the same was rightly rejected firstly by the trial Court and thereafter the said finding has been confirmed by the First Appellate Court. The learned Counsel submitted that, since there is no perversity in the findings recorded by the Courts below, no interference is called for in the judgments rendered by the Courts below.

10. I have duly considered the submissions advanced by the learned Counsel appearing for the respective parties. I have

perused the Judgments passed by the Courts below as well as the evidence adduced in the matter and the other material placed on record. The very basic fact, which needs to be considered in the present matter is, how the appellant came in possession of the property in question. Insofar as the aforesaid aspect is concerned, it is not in dispute that, the premises were given in possession of the appellant by virtue of his employment with the respondent. It is the case of the appellant himself that, after he entered into the employment of the respondents, the tenement was allotted to him being he is in employment of the respondent. Once this fact is accepted, and unless any other document is placed on record showing that subsequently after retirement of the present appellant any other agreement was entered into between the appellant and the respondent permitting the continuation of the tenement in possession of the present appellant on rent, no right can be said to have accrued in favour of the present appellant. It cannot be lost sight of that, the premises, which are provided to the employees by virtue of their employment with said institute or establishment are liable to be vacated by the said employee after he ceases to be an

employee of the said establishment.

11. In the instant matter, the material on record transpires that, no prompt steps were taken by the respondents – Society in getting the premises vacated in occupation of the father of the present appellants after he retired from the services, for the reason that the respondent – Society itself was not effectively functioning at the relevant time. The material on record further shows that, eventually the respondent – Society went in liquidation and the charge of the same was given to the official liquidator. It is evident that, in the meanwhile period, no steps could be taken against the father of the appellants in relation to the premises in his occupation by virtue of his employment with the respondent – Society and on the contrary some receipts came to be issued in his favour showing that, rent was recovered from him. As I noted earlier, the emphasis of the learned Counsel appearing for the appellant was on the point that, respondent – Society accepted rent from the appellant after his retirement and as such, the appellant must be treated as tenant of the respondent – Society and not as its former

employee. The contention so raised by the learned Counsel, however, cannot be accepted. As I mentioned earlier, the appellants have failed in producing on record any cogent material to show that, any rent agreement was executed between them and the respondent- Society. Mere issuance of some receipts, wherein the amount received from the appellants is inadvertently shown to be recovered as rent, the appellants cannot be conferred with the status of the tenant of the respondent - Society.

12. The learned Civil Judge, Junior Division, Latur had rightly dismissed the suit filed by the deceased father of the appellants seeking perpetual injunction against the respondent – Society. The learned District Judge has confirmed the Judgment passed by the trial Court. I do not see any reason to cause any interference in the conclusions recorded by the Courts below that, the occupation of the subject house by the original plaintiff was not legal after he seized to be an employee of the defendants - Society and he could not prove the plea raised by him that he was a tenant in the subject premises. Thus, no case

was made out by the plaintiff for grant of perpetual injunction in his favour against the defendant - Society. In the present appeal also the appellant has failed in making out any case so as to take any contrary view than taken by the Courts below.

13. The Second Appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs.

. Pending Civil Application, if any, stands disposed of.

(P. R. BORA, J.)