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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 480 OF 2018
WITH
CIVIL APPLICATION No. 1096 OF 2018

Sabestin Augustin Rodrix
(since deceased, through L.R.) & Ors. ... Appellants
Vs.
Smtt. Savitri D. Pawar & Ors. ... Respondents

Mr. Kedar P. Lad, for the Appellants.
Mr. V. S. Gokhale, for the Respondent Nos. 1 to 10.

CORAM : A. M. DHAVALE, J.
DATE : AUGUST 30, 2018

PC :-

1. Heard the learned advocate Mr. Kedar Lad, for the Appellants.
2. Admittedly, open plot admeasuring 15 ft. x 31 ft. at CTS No. 1325/76/A/2, "E" Ward, Kolhapur was leased out by the plaintiffs to the defendant and his father-in-law on monthly rent of Rs. 25/- on 8.2.1959. Lateron, defendant constructed a shed at his own expenses on the said plot. After the death of his

father-in-law, defendant became sole tenant. Initially, there was protection under the provisions of Bombay Rent Control Act to the tenant but the said Act was repealed on 31.3.2000 and the Maharashtra Rent Control Act, 1999 came into force.

3. It is not disputed that provisions of the Maharashtra Rent Control Act, 1999 are not applicable to the open plot. The plaintiffs served a notice of termination on 7.2.2007 and filed Regular Civil Suit No. 486 of 2017. Since the learned Civil Judge, J. D. Kolhapur by judgment and decree dated 20.12.2010 dismissed the suit, the appeal, being Regular Civil Appeal No. 218 of 2011 was preferred against the same. It came to be dismissed by judgment and order dated 3.7.2007. Thus, there is a concurrent finding of the courts below that there was proper termination of tenancy.

4. Learned advocate for the Appellants argued that the defendant has constructed a shed on the tenanted premises with consent of the landlord and as per Section 108(d) of the Transfer of Property Act, 1882, it is an accession made to the

property. In view of said accession, suit plot is not an open plot and the provisions of the Maharashtra Rent Control Act, 1999 would be applicable to the same.

5. It is apparent that though it was claimed that Maharashtra Rent Control Act was applicable, the contention that the plot is not open in view of construction of shed which amounts to accession, was not raised in the trial Court or in the first appellate Court. It is taken for the first time before this Court. Learned advocate for the Appellants does not dispute that rent of the open plot let out remained the same, even after construction of the shed and therefore, shed cannot be deemed to be the property of the landlord. There is no pleading that the shed was constructed by the tenant with the permission of the landlord, as argued for the first time before me.

6. It is obvious that when open plot is leased out, normally, it cannot be utilised without construction of structure thereon by the tenant. Therefore, if construction of structure by the tenant is going to change nature of the property, the

provisions of Maharashtra Rent Control Act exempting the open plot from the purview of said Act would become redundant. Therefore, accession can't be said to include shed constructed by the tenant on leased plot.

7. In view of above, I find no substantial question of law involved in this second appeal, which deserves to be dismissed in *limine* and it is accordingly dismissed in *limine*.

8. The learned trial judge shall grant time of two months for vacating the suit plot to the tenant subject to payment of occupation charges as per the market rate, as he may find proper, and subject to the tenant giving undertaking to vacate the plot, in case no stay order is brought from the superior Court.

9. Pending Civil Application No. 1096 of 2018 filed in the appeal does not survive and is accordingly disposed of.

Sd/-
[A. M. DHAVALE, J.]