

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

Second Appeal No.175/2018

Sheikh Mustaq Sheikh Rasul and another
V/s.

Hitesh @ Ritesh Krushnaji Khobragade (dead) thr. L.Rs. and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Rohit Joshi, Advocate for appellants.
Mr. M.L.Vairgade, Advocate for respondent No.2.

CORAM : A.S. CHANDURKAR, J.

DATE : 08/06/2018.

The appellants are the original plaintiffs who have filed suit for perpetual injunction seeking to restrain the defendants from disturbing their peaceful possession or from dispossessing them. It is their case that they are occupying the suit house having two rooms, the same having been let out by one Parvatabai Laxman Moon for the rent of Rs. 300/- per month. They were thereafter paying rent to one Kawadu Umare till 31/03/2007, but no receipts were issued. After the death of Parvatibai Laxman Moon, the defendants sought to take forcible possession and hence the aforesaid suit came to be filed. In that suit, the defendants filed a counter-claim seeking possession on

the ground that the plaintiffs were trespassers and had forcibly occupied the suit house.

After the parties led evidence, the trial Court held that the plaintiffs could not prove that they had paid rent of the suit property to Parvatabai and rent receipts bore her signatures. The suit for injunction was dismissed and the counter claim was allowed. The trial Court confirmed the aforesaid decree.

It is submitted by the learned Counsel for the appellants that the evidence on record has not been properly appreciated, inasmuch as certain admissions given by the defendant No.1 as well as defendant No.2 have not been taken into consideration. According to him, the plaintiffs were residing in the capacity of tenants and their tenancy was admitted by defendant No.2. No steps were taken by the defendant No.2 despite having knowledge that the plaintiffs were in occupation of the suit premises. It is therefore submitted that the Courts have failed to consider the admissions of defendant no.2 and the decree for possession could not have been passed.

The learned Counsel for the respondents supported

the impugned judgment. According to him, in absence of any evidence to show that the plaintiffs were occupying the suit premises as tenants no interference is called for. The evidence which is said to be not considered is not of such nature that would support the stand of the plaintiffs. The stray admissions without any other material cannot be held against the defendants.

Heard the learned Counsel for the parties at length and perused the evidence led by the parties. On consideration of the evidence on record, it has been found that the plaintiffs were unable to demonstrate that they were occupying the suit premises as tenants for almost twenty years by paying rent @ Rs. 300/- per month. It has been found that there is not a single document to indicate the occupation of the plaintiffs as tenants. The admissions sought to be relied upon by the plaintiffs are not of such a nature that can have the effect of defeating the case of the defendants. When the entire cross-examination is perused, it cannot be said that it has been admitted by the defendant No.2 that the occupation of the plaintiffs was as tenants.

On considering the entire evidence on record, it has been found by both the Courts that the claim of tenancy has not been proved by the defendants. This appreciation of evidence cannot be said to be perverse, giving rise to a substantial question of law . In view thereof, I do not find any reason to interfere with the judgments of the Courts below. The Second Appeal is, therefore, dismissed.

In the facts of the case, the appellants are granted time of three months to hand over the possession to the respondents.

JUDGE

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