

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

Second Appeal No.780/2017

(Dilip Sukhdeorao Bhugul .vs. Kishor M. Deshkar and others.)

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

Court's or Judge's orders.

Mr. S.K.Bhoyar, Advocate for Appellant.

Mr. R.M. Bhangde, Advocate for Respondent Nos. 3 & 4.

CORAM : Manish Pitale, J.

DATED : March 8, 2018.

By this appeal, the appellant (plaintiff) challenges judgment and order dated 22.01.2016 passed by the District Court, Wardha, in Regular Civil Appeal No. 221 of 2011, whereby the appeal has been dismissed and the judgment and order of the trial court dismissing his suit for declaration and injunction, has been confirmed. Both the Courts have concurrently held on facts against the appellant.

2. The appellant filed Regular Civil Suit No. 109/2009 before the trial Court at Wardha, on 22.06.2009 claiming that in May, 2008, he had been inducted as a tenant in suit house situated at Plot No.D-16 in Himalaya Vishwa Colony, Nagpur Road, Wardha. It was his case that the respondent no.2 was the owner of the suit house while he had been inducted in it by the respondent no.1 who had handed over the keys to him and that he was regularly paying rent to the respondent no.1. According to him, it was when on 16.06.2009, the respondent no.2 filed a police complaint against him

alleging that he had trespassed in the suit house that the cause of action arose for him to file the aforesaid suit where he sought a declaration of his status of being tenant in the suit house and a permanent injunction restraining the respondents from dispossessing him from the suit house. The respondent no.2 filed a counter claim seeking possession of the suit house contending that the appellant was a rank trespasser.

3. The parties led oral and documentary evidence in support of their respective claims. The trial Court passed its judgment and order dated 21.09.2011 holding that there was no evidence on record, much less documentary evidence, to show that the appellant had been inducted in the suit house as a tenant and that he had been regularly paying rent to the respondent no.1. It was only found that he had paid electricity bills in respect of the suit house, which at the most, proved that he was in possession of the suit house. The trial court, on appreciation of the evidence and material on record reached findings of fact against the appellant to the effect that he failed to prove his status as that of a tenant and that, therefore, the respondent no.2 was entitled for a decree of possession against the appellant.

4. Aggrieved by the said judgment and order, the appellant filed an appeal before the District Court. By the impugned judgment and order, the District Court has confirmed the findings rendered by the trial Court. It has found that there was no documentary evidence on

record to show that the appellant was in possession of the suit house as a tenant. There was no evidence to show that he had paid rent to the respondent no.1. In fact, the appellate Court recorded that the appellant had categorically stated in his cross-examination that he had not shown payment of rent amount by him in income tax returns. Therefore, on a threadbare analysis of the evidence and material on record, the appellate Court rendered findings of fact against the appellant, thereby confirming the decree passed by the Court below.

5. Mr. S.K. Bhoyar, the learned counsel appearing on behalf of the appellant, has submitted that the findings rendered by the Courts below were perverse, inasmuch as, the manner in which the keys of the house were handed over to the appellant, was not properly appreciated. But, the learned counsel could not point out any error in the findings of fact rendered by the Courts below as regards the status of the appellant. There is no shred of evidence to support the contentions raised on behalf of the appellant in the instant case.

6. On the other hand, Mr. R.M. Bhangde, learned counsel appearing on behalf of the respondent nos. 3 and 4, pointed out that there was no question of law that arises in the instant second appeal and that there was nothing on record to show that the respondent no.2, owner of the suit house, had given any authority to the respondent no.1 who had allegedly inducted the

appellant in the suit house. He relied upon judgments of this court in the case of **Dr. Jayant G. Deshpande and others .vs. Maheshchandra Z. Joshi and others** (Second Appeal No. 191 of 1997) rendered on 14.02.2018 in support of his contention. He further relied upon judgments of the Hon'ble Supreme Court in the cases of **Bhuri Bai and ors. .vs. Ramnarayan and others - (2009) 4 Supreme Court Cases 56** and **Gurvachan Kaur and ors. .vs. Salikram - (2010) 15 Supreme Court Cases 530** to contend that when there were concurrent findings rendered by the Courts below, there can be no interference by the Court exercising jurisdiction under Section 100 of the Code of Civil Procedure, unless the perversity in the findings was demonstrated.

7. Having considered contentions of rival parties, this Court is of the opinion that the Courts below have rendered concurrent findings of facts as regards the status of the appellant and that since there is not even a shred of evidence in support of the contentions raised by the appellant about his claim of being a tenant in the suit house, there is no perversity in the findings rendered by the Courts below. In such a situation, there is no question of law that arises in this appeal much less a substantial question of law. Hence, this is not a case where this Court would be inclined to exercise jurisdiction under Section 100 of the C.P.C.

8. Accordingly, this appeal is found to be without merit and it is dismissed with no order as to costs.

9. It is found that since the appellant is in possession of the suit house since May, 2008 and the Courts below rendered findings that he was not a tenant therein and that there was no evidence to support the claim made by him of his status as a tenant, it is evident that he is in unauthorized occupation of the suit house for about 10 years. In this backdrop, the execution proceedings initiated in the present case by respondent no.2 being Regular Darkhast No.34 of 2016 pending before the Court of 8th Joint Civil Judge, Junior Division, Wardha, is expedited, to be decided as far as possible within a period of six weeks from today.

JUDGE

halwai