

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

Second Appeal No.754/2017
(Ashok Lileshwarrao Wandile and another .vs. Ramchandra Mahadeo
Madavi)

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

Court's or Judge's orders.

Ms. Komal S. Mundle, Advocate h/f Dr. Anjan De, Advocate for
Appellant.
Mr. M.P. Kariya, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : February 28, 2018.

1. On 19.12.2017, while issuing notice, this Court had framed the following substantial question of law:-

Whether the first appellate Court has appreciated the evidence on record in its proper perspective, or by ignoring to consider the same, a perverse finding as regards failure to prove the agreement in question has been arrived at “?

2. The facts leading up to filing of this appeal are that the respondent had filed a suit for possession against the appellants herein stating that he was the owner of House No. 221 at mouza Kandhali, tahsil Samudrapur, district Wardha. It was stated by the respondent-plaintiff that the appellants entered into the aforesaid house property and when it was noticed by him, they requested him that they should be permitted to stay in the house since they had been thrown out by their parents. Thereafter when the respondent asked

the appellants to give possession of the suit house property, they refused leading to filing of the aforesaid suit for possession.

3. Before the trial Court, the appellants-defendants took a defence that they were in possession of the suit house property in pursuance of an oral agreement to purchase the said house for a total consideration of Rs.40,000/- from the respondent. It was contended that they had paid an amount of Rs.11,500/- as earnest money in pursuance of the said oral agreement and that they were, therefore, legally in possession of the suit house property.

4. Upon recording of evidence, the trial Court passed its judgment and order dated 17.03.2012 holding that although the appellants had contended that they had entered into oral agreement, in pursuance of which they were in possession of the suit house property, they had failed to lead any evidence to show the exact date of oral agreement to sale, payment of earnest money, or the date on which it was paid and as to in whose presence they had paid the amount towards earnest money. The trial Court found that there was no evidence in support of the stand taken by the appellants. On this basis, the trial Court decreed the suit and directed the appellants to deliver possession of the suit house property to the respondent within a period of 3 months from the date of its order.

5. Aggrieved by the same, the appellants filed

regular civil appeal before the Court of District Judge, Hinganghat. By the impugned judgment and order, the said Court has dismissed the appeal confirming the findings of the trial Court.

6. The said Court has also found that other than mere statements made by the appellants, there was no evidence to prove their contention that there was indeed an oral agreement between the parties. As regards the contention of the appellants that they had spent certain amount of money on renovation of the suit property, the Court found that other than producing a witness who made oral statements in support of the said contention of the appellants, there was no evidence in the form of any bills or record of construction to show that the appellants had spent money on renovation of the suit premises. On this basis, the said Court dismissed the appeal of the appellants and confirmed the findings of the trial Court.

7. Aggrieved by the same, the appellants have filed this appeal, wherein the above mentioned question of law was framed. Ms. K.S. Mundle, learned counsel appearing on behalf of the appellants, contended that there was sufficient evidence on record to show that there was oral agreement between the parties and that the finding rendered by the Court below was perverse. It was further contended that since the appellants had spent considerable amount of money for renovation of the suit property, there was nothing on record to show that they were in possession of the said property as

licensees. It was contended that since the respondent had never revoked the licence of the appellants, the decree of possession could not have been passed. This contention has been taken on behalf of the appellants for the first time before this Court. There is no such stand taken in the course of the proceedings in the Courts below and there is no iota of evidence in support of the said contention. Therefore, the same deserves to be rejected.

8. As regards the question of law framed by this Court, a perusal of the impugned judgment and order and judgment of the trial Court shows that both the Courts have taken into consideration the evidence and material placed on record on behalf of the appellants. It is found that other than mere oral statements, there is no cogent evidence placed on record by the appellants to support their contentions. Hence it cannot be said that the findings rendered by the Courts below are perverse. Therefore, the aforesaid question of law is answered against the appellants and in favour of the respondent.

9. Accordingly, this appeal being found without any merit, is dismissed with no order as to costs.

JUDGE