

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**901 SECOND APPEAL NO. 169 OF 2019
WITH
CIVIL APPLICATION NO.3745 OF 2019**

- 1) Jagannath Garbad Patil (Dead)
L.Rs. Of deceased No.1.
- A) Kamalabai Jagannath Patil,
Age 59 years, Occupation Household,
R/o Vardi Tq.Chopda Dist. Jalgaon.
- B) Amarnath Jagannath Patil,
Age 30 years, occupation Agri.,
R/o Vardi Tq.Chopda Dist.Jalgaon.
- C) Ku. Sarla Jagannath Patil,
Age 27 years, occupation Household,
R/o Vardi Tq.Chopda Dist.Jalgaon.
- D) Pushpabai Eknath Patil,
Age 45 years, Occupation Household,
R/o Bondarade Post.Nimbhora
Tq. Bhadgaon Dist.Jalgaon.
- E) Ratnabai Machindra Patil,
R/o 41 years, occupation Household,
R/o Dhamangaon Dist. Dhule.
- F) Ranjanabai Premraj Patil,
Age 44 years, Occupation Household,
R/o Chamangaon Post.Sonwad
Tq. Charangaon Dist. Jalgaon.
- 2) Ganpat Garbad Patil,
Age 64 years, occupation Agri.,
R/o Vardi Tq.Chopda Dist. Jalgaon.

(Appellant No.1-A, 1-C to 1-F and
Appellant No.2 through their power
of Attorney holder, Appellant No.1-B **..Appellants**

VERSUS

- 1) Pushpabai Gotulal Baheti,
Age 64 years, Occupation Household,
R/o Adawad Tq. Chopda Dist.Jalgaon.
- 2) Radhakrushna Gotulal Baheti,
Age 43 years, Occupation Agri.,
R/o Adawad Tq.Chopda Dist.Jalgaon.
- 3) Akshay Gotulal Baheti,
Age 37 years, occupation Agri.,
R/o Adawad Tq.Chopda Dist.Jalgaon.
- 4) Varsha Sureshkumar Maheshwari,
Age 43 years, occupation Household,
R/o Adawad Tq.Chopda Dist.Jalgaon.
- 5) Sarpanch, Gram Panchayat,
Vardi Tq.Chopda Dist.Jalgaon. **..Respondents.**

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Mr. P. F. Patni, Advocate for appellants
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 12-03-2019.

ORAL ORDER :

1. Heard learned advocate appearing for the appellants – original
defendants No.1-A to 1-F and 2. They have filed present appeal
challenging the dismissal of their appeal i.e. Regular Civil Appeal No.56
of 2009 by learned Additional District Judge -1, Amalner on 22-01-

2018. In the said appeal the Judgment and decree passed in Regular Civil Suit No.86 of 1998 by Civil Judge, Junior Division, Chopda Dist. Jalgaon was challenged which was decided on 09-07-2009. The said civil suit was filed by the present respondents No.1 and 2 for declaration, possession and recovery of arrears of rent against original defendants No.1 to 3. The subject matter of the suit was the house property bearing No.856 (old House No.718), Survey No.616 and 617 of village Vardi Tq. Chopda Dist. Jalgaon. It is stated that, previously the said property was owned by Kashinath Bhagirath who was the father-in-law of plaintiff Pushpabai. After death of Kashinath, his son Gotulal Kashinath became owner of the suit property by succession who was the husband of plaintiff No.1 and father of plaintiff No.2 as well as added defendants. Gotulal died in 1993-1994 and after his death the plaintiffs as well as added defendants have become the owners of the suit property. Kashinath had leased out the suit property to defendants No.1 and 2 @ of Rs.18/- per month. Tenancy was according to the British calendar. According to the plaintiffs, the defendants No.1 and 2 have paid the rent of the suit property till 1995. Thereafter, since January 1996 they are in arrears. Plaintiff had demanded the arrears from time and again, however they have not paid the same. On the contrary the plaintiffs came to know that, defendants No.1 to 3 in collusion had recorded the names of defendants No.1 and 2 to the

village Panchayat to the suit property by unlawfully passing a resolution. Plaintiffs had terminated the lease of the defendants and they demanded the arrears of rent by issuing notice dated 13-04-1998 which was given through RPAD. It is stated that, defendants have given a false reply and refused to hand over the possession of the suit property to the plaintiffs, and therefore, the suit was filed.

2. The defendants No.1 and 2 resisted the claim of the plaintiffs by filing written statement. They admitted that, Kashinath was the owner of the suit property, however they contended that, defendants No.1 and 2 were inducted in 1948 in the suit property by Kashinath on payment of rent @ of Rs.2/- per month. It was also their case that, Kashinath had orally sold the suit property to them and this fact was known to the husband of plaintiff No.1. It was also stated that, the plaintiffs have no *locus standi* to file the suit. They got their names recorded to the city survey record in 1982 and therefore the suit is beyond the period of limitation. They claimed to be the owners and possessors of the property since 1948 without any interruption.

3. It appears that, during the pendency of the suit defendant No.1 has expired, and therefore, his legal representatives have been brought on record. They have adopted the written statement given by defendant No.1. The suit proceeded *ex-parte* against defendant No.3.

4. Taking into consideration the rival contentions, issues came to be framed. Parties have led oral as well as documentary evidence. Taking into consideration the evidence on record, the suit was partly decreed and defendants No.1 and 2 directed to hand over the vacant and peaceful possession of the property within forty days from the date of the decree to the plaintiffs. It was declared that, the plaintiffs and added defendants No.1 to 3 are the owners of the property. Defendants No.1 and 2 were directed to pay the arrears of rent of Rs.504/- to the plaintiffs.

5. The said Judgment and decree was challenged in the aforesaid Civil Appeal No.56 of 2009 and after hearing both the sides, it came to be dismissed on 22-01-2018. Hence, this second appeal.

6. The learned advocate appearing for the appellant submitted that, substantial questions of law are involved in this case firstly in respect of the jurisdiction. It is submitted that, the plaintiffs had come with a case that, it was a property that was leased out, and therefore, the relationship between the plaintiffs and the defendants No.1 and 2 was landlord and tenant. The suit ought to have been filed before Provincial Small Cause Courts under the Provincial Small Cause Courts Act. Whereas it appears from the number that has been given to the suit

that, it is before the regular Civil Court. The parameters are different and therefore the jurisdiction point being the point that goes to the root of the case and since it has not been addressed by the both the Courts below, it is one of the substantial questions of law here. He also submitted that, the notice that was required to be issued by the landlord under Section 106 of Transfer of Property Act has not been considered properly by both the Courts below. They have not framed any specific issue in respect of the validity of the notice, and therefore, he prayed for issuing notice to the respondents on the fact of these substantial questions of law.

7. As regards jurisdiction point is concerned it appears that, it was never raised before both the Courts. The specific perusal of the paper book which was prepared for the first Appellate Court would show that, in the written statement except a vague denial there is nothing. The learned advocate appearing for the appellant has placed reliance on the decision in, *Shakirbhai Makbul Hussain and others Versus Smt. Tahera Begum and Others*, reported in *AIR 1989 BOMBAY 313*, wherein the scheme of the Act was taken into consideration and it was held that,

“Section 26 of the Provincial Small Cause Courts Act provides for all the suits for possession between landlord and tenant or a licensor and the licensee are made exclusively triable by Small Cause Courts and this

jurisdiction is not limited by any other provisions.”

8. Further reliance has been placed on the decision in, *Mansukhlal Dhanraj Jain and others Versus Eknath Vithal Ogale, Vasdev Prakash Versus Mrs. Vimla Premchand Hinduja and others*, reported in *AIR 1995 Supreme Court 1102*, which is almost on the similar lines but it was under Presidency Small Cause Courts Act. The first and the foremost fact is that, there has to be a specific plea taken for bar of jurisdiction of the Court. No doubt it can also be raised and that point can also be dealt with as preliminary issue if it appears to the Court that any point involving the jurisdiction of the Court is involved. In spite of having opportunity to the defendants, they had not raised this point in their written statement. Further after the issues were framed they could have brought it to the notice of the trial Court that, still one more issue deserves to be framed which would be in respect of jurisdiction of the Court. So that was one more opportunity to the defendants to bring it to the notice of the trial Court that, he or they want to raise the point of jurisdiction. The third opportunity was available to the defendants when they filed the appeal. Perusal of the appeal memo before the first Appellate Court would show that, no specific ground to that effect was ever raised, no arguments were advanced before the First Appellate Court. Under such circumstances

for the first time the said point is tried to be raised before this Court. As regards the decision in *Mansukhlal Dhanraj Jain Vs. Eknath Vithal Ogale*, reported in *AIR 1995 Supreme Court 1102 (Supra)* is concerned, it is to be noted that, it was under Presidency Small Cause Courts Act and the property involved in the same was situated at Dadar in Bombay. Therefore, a question was whether the suit would lie before Small Causes Court or City Civil Court. Taking into consideration the pleadings and the prayer it was held that, when the suit or proceeding which was between licensee or licensor and such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay, it was held that the jurisdiction of the City Civil Court was out of question. In *Shakirbhai Makbul Hussain and others Versus Smt. Tahera Begum and Others*, reported in *AIR 1989 Bombay 313 (Supra)* order passed by Additional Judge of the Court of Small Causes, Nagpur was questioned and also taking into consideration the fact that the relationship between the parties which was canvassed was licensee and licensor, it was held that, the jurisdiction was with the Small Causes Court. Here there is no Court of Small Causes at Chopda. A statement has been made that, when the suit was instituted, there was no applicability of Bombay Rent Act to the place where the suit property was situated i.e. village Vardi, and therefore, the suit could have been only under the Transfer of Property Act. Therefore, the said suit which

has been tried by Civil Judge, Junior Division, cannot be said to be out of jurisdiction. Since it is not a Small Court specially designated as a Small Causes Court registration of the suit as regular civil suit will not give a point to the appellant to submit that it has been decided by a wrong Court. So, there is no substance in the said point, it is much less a substantial question of law.

9. As regards notice under Section 106 of Transfer of Property Act is concerned, perusal of the plaint, written statement, evidence and the Judgments of both the Courts, would show that, everywhere there is a mention of said notice. The notice was basically replied and the notice reply is at Exhibit 93. Specific statement was made by P.W.1 Radhakrishna that, notice was issued and tenancy has been terminated. There is no denial of the same in specific words in his cross-examination rather the notice reply itself has been produced by the defendants which shows that, they had received the notice. If the calculation is made, definitely a clear 15 days notice was issued and a specific observation has been made by the trial Court that, it is not a case of the defendants that the said notice is not valid. In the appeal memo also no specific point to that effect was raised. Under such circumstance it cannot be said to be a substantial question of law to be dealt with in this appeal. Therefore, no substantial questions are

arising in this matter. Hence the second appeal is **not admitted** and disposed of accordingly. Civil Application No.3745 of 2019 also stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.