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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.18839 OF 2017
WITH
CIVIL APPLICATION NO.1124 OF 2018
IN
SECOND APPEAL (STAMP) NO.18839 OF 2017

Ram K. Shinde	...Appellant
V/s.	
Bashir A. Jainoddin Shaikh & Anr.	...Respondents

Mr.Madhav V. Thorat with Mr.A.B. Seth for the Appellant.

Mr.Drupad S. Patil Patil for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 17TH SEPTEMBER, 2019.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the judgment and decree dated 4th March, 2017 passed by District Judge – 4, Solapur in Regular Civil Appeal No.242 of 2016 confirming the decree passed by the learned Trial Court.

2. The father of the plaintiff and defendant no.1 entered into a lease agreement in the year 2009 in respect of open land bearing CTS No.8391/18 out of Municipal House No.162/14 situated at Railway Lines, Solapur on payment of Rs.100/- per month rent. The tenancy was terminated by the original plaintiff. The plaintiff thereafter filed a suit before the learned Trial Court *inter-alia* praying

for possession of the open land after removal of the structure constructed by the father of the defendant no.1. It is not in dispute that the father of defendant was permitted to carry out construction on the land which was leased in favour of the father of the defendant no.1 by the father of the plaintiff.

3. Learned Trial Court framed six issues for determination. Insofar as issue no.1 is concerned, learned Trial Court held that the defendant no.1 had proved that his father had taken open land from the plaintiff's father at the rent of Rs.8/- per month and constructed room on the open land after obtaining permission from Solapur Municipal Corporation. Learned Trial Court also rendered various findings in favour of the plaintiff and decreed the said suit.

4. The first Appellate Court also after considering the oral as well as documentary documents dismissed the appeal preferred by the defendants.

5. Learned counsel appearing for the appellant (defendant no.1) submits that the father of the defendant no.1 had constructed the rooms on the open land which was given on lease after obtaining permission from the Municipal Corporation, Solapur. He submits that since the structure on the open plot of land which was given on lease, the provisions of the Maharashtra Rent Control Act were applicable and not the Transfer of Property Act, 1882. He submits that none of the Courts below have considered this aspect at all in

the judgment and decree passed by the two Courts below. He submits that since there was a tenancy also of the structure, the provisions of the Maharashtra Rent Control Act were applicable and not the provisions of the Transfer of Property Act.

6. Mr.Patil, learned counsel appearing for the original plaintiff invited my attention to the prayers in the plaint filed by his client and more particularly prayer clause (a) and would submit that his client had prayed for recovery of possession of the open plot after removal of the structure by the defendant no.1. He also invited my attention to various findings of fact rendered by the learned Trial Court on the issue that the lease was granted in respect of the open plot of land and not the structure and thus the provisions of the Transfer of Property Act were applicable and not the provisions of the Maharashtra Rent Control Act. He submits that the learned Trial Court interpreted the lease agreement entered into between the father of the plaintiff and the defendant no.1 and has recorded the findings that the subject matter of the tenancy was open plot and not the structure.

7. It is submitted by the learned counsel that the Appellate Court had independently considered the oral as well as documentary evidence led by the parties and has confirmed the findings rendered by the learned Trial Court. Learned counsel placed reliance on the judgment of this Court in Case of **Savitribai Vishnupant Vaske & Ors. vs. Faruk Abdulrahim Patel & Ors., 2011 (4) Bom.C.R. 738**

and in particular paragraphs 9, 10 and 15 in support of his submission that since the lease was for open plot of land, the provisions of the Transfer of Property Act was applicable.

8. A perusal of the prayers in the plaint filed by the original plaintiff clearly indicates that the lease granted in favour of the father of the defendant no.1 was for the open plot of land. The prayer was for recovery of possession of the open plot of land after removal of the structure carried out by the father of the defendant no.1. The entire case of the plaintiff before the learned Trial Court was that the tenancy was only in respect of the open land and not the structure and thus the provisions of the Transfer of Property Act was applicable and not the Maharashtra Rent Control Act.

9. A perusal of the findings rendered by the learned Trial Court clearly indicates that after interpreting the recitals of the agreement entered into between the parties and after considering the oral as well as documentary evidence, the learned Trial Court held that the lease was given in respect of the open plot of land and not the structure. The defendant no.1 had failed to prove that the tenancy was also in respect of the structure. In these circumstances, the two Courts below admittedly held that since the lease was in respect of the open land, the provisions of the Transfer of Property Act were applicable and not the Maharashtra Rent Control Act.

10. This Court in case of **Savitribai Vishnupant Vaske &**

Ors. (supra) has specifically dealt with an identical issue and the facts and has held that the provisions of the Maharashtra Rent Control Act are not applicable to the open land. The provisions of the Transfer of Property Act are applicable. The said judgment of this Court applies to the facts of this case. I am respectfully bound by the said judgment.

11. In my view, the submission of the learned counsel for the defendant no.1 that the two Courts below have not considered the issue that there was structure on the suit land is concerned, a perusal of the record clearly indicates that the Trial Court after interpretation of the provisions of the terms and conditions of the lease agreement has rightly held that the tenancy was only in respect of the open land. The father of the plaintiff no.1 had permitted the father of the defendant no.1 to carry out the construction on the open plot of land which was the subject matter of the lease agreement. There was no tenancy in respect of the structure constructed by the father of the defendant no.1. There is thus no merit in this submission of the learned counsel for the defendant no.1.

12. The findings of fact rendered by the two Courts below are rendered after considering the oral as well as documentary evidence and also the pleadings and being not perverse, cannot be interfered with by this court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908.

13. No substantial question of law arises in this second appeal. The second appeal is dismissed.

14. In view of dismissal of the second appeal, Civil Application No.1124 of 2018 does not survive and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)