

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

Second Appeal No.140 of 2018
(Satish Kachrual Malode and others. .vs. Harish s/o Ratanlal Alamchandani
through P.O.A. Shri Bhawandas Fatandas Jiwanani)

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

Court's or Judge's orders.

Mr. C.S. Kaptan, Senior Advocate with Mr. Rohit Joshi, Advocate for Appellants.
Mr. M.G. Sarda, Advocate for Respondent.

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Coram : Manish Pitale, J.
Date of Reserving Order : September 27, 2019
Date of Pronouncing Order : October 04, 2019

By this appeal, the appellants (original defendants) have challenged decree granted in favour of the respondent (original plaintiff) by the two Courts below.

2. The respondent filed a suit for possession and damages against the appellants, contending that they were wrongfully occupying the suit property. According to the respondent, the suit property was earlier owned by a partnership firm called M/s Ramjivan Ginning and Pressing Factory. It was the case of the respondent that he had purchased the suit property from the firm and that a part of the said property was in the occupation of the father of the appellants as he was in service in the said partnership firm. It was claimed that the said father of the appellants i.e. Kachrual had been given permission to reside in the quarter, which was later wrongfully occupied by the appellants. The firm was

dissolved and that by virtue of the sale deed executed in favour of the respondent, he was the rightful owner thereof and, therefore, he was entitled to seek possession of the suit property. Since the appellants refused to hand over possession to the respondent on requests made by him, he was constrained to file the aforesaid suit. The respondent also made reference to a suit bearing Special Civil Suit No. 11 of 1997 filed by one of the partners of the firm i.e. one Manojkumar, wherein the respondent was arrayed as defendant no.8. The execution of sale deed in favour of the respondent was also challenged in the said suit, but the suit was disposed of by way of compromise on 15.12.2000 and the ownership and title of the respondent was recognized in the said premises.

3. The appellants resisted the prayers made on behalf of the respondent by claiming that their predecessor Kachrual had been occupying the suit property as a tenant of the original owner. It was contended that he used to pay rent of Rs.220/- per year to Mohanlal Khandelwal, also an alleged partner of the said firm and that since the appellants continued in possession of the suit property as tenants, the suit for possession filed by the respondent was not maintainable and it was required to be dismissed. The appellants also relied upon a report of a Commissioner prepared in the earlier litigation as also certain municipal entries, wherein their predecessor was recorded as a tenant. It was also contended that a rent receipt was placed on record to support the contentions

raised on behalf of the appellants.

4. The Court of Civil Judge, Senior Division, Washim (trial Court) considered the oral and documentary evidence on the record and the contentions raised on behalf of the rival parties and found that the respondent had made out a case for grant of decree. Accordingly, the suit was decreed and the appellants were directed to hand over possession of the suit property within six months and also to pay Rs.30,000/- by way of damages to the respondent.

5. Aggrieved by the same, the appellants filed appeal before the Court of Principal District Judge, Washim. By the impugned judgment and order dated 19.09.2017, the appeal was dismissed with costs and the decree granted in favour of the respondent was confirmed.

6. The appellants filed the present appeal to challenge the concurrent orders passed by the two Courts below. On 12.10.2018, this Court issued notice on the following substantial question of law:-

“Whether the appreciation of evidence for holding that Kachrual was the licensee of Ginning Factory is perverse?”

This Court had also granted stay of the decree while issuing notice on the aforesaid substantial question of law.

7. Mr. C.S. Kaptan, learned senior advocate with

Mr. Rohit Joshi, Advocate for the appellants, submitted that the finding rendered by the Court below to the effect that the appellants could not prove that they were tenants of the suit property, was perverse and the contentions raised on behalf of the respondent that the said Kachrual was residing in the suit premises by virtue of being employee of the aforesaid firm, was unsustainable in view of the material placed on record on behalf of the appellants. The learned senior counsel placed reliance on Exh. 71 i.e. the disposal of the aforesaid earlier suit bearing Special Civil Suit No. 11 of 1997 by way of compromise. It was submitted that proper reading of the terms of the compromise would show that one of the partners Ravindra Khandelwal was specifically authorised to recover rent from the tenants and that since the appellants had placed on record a rent receipt dated 31.03.1999 (Exh.113), showing that annual rent was indeed paid to the said Ravindra Khandelwal, it was clear that the appellants were tenants in the suit property and that, therefore, the decree of possession passed by the two Courts below was unsustainable. On this basis, it was contended that the question of law framed by this Court was required to be answered in favour of the appellants and the appeal deserved to be allowed.

8. On the other hand, Mr. M.G. Sarda, learned advocate appearing on behalf of the respondent, submitted that the concurrent findings rendered by the two Courts below were based on proper appreciation of the oral and documentary evidence on record. It was

contended that the receipt Exh.113 relied upon by the appellants was not believable because the compromise entered into between the parties was dated 15.12.2000 while the said receipt Exh.113 was dated 31.03.1999. On this basis, it was contended that if the authority to recover rent under the compromise was granted to Ravindra Khandelwal on 15.12.2000, there was no question of the said person recovering rent from the predecessor of the appellants on 31.03.1999. Apart from this, it was submitted that the sufficient material was placed on record to show that the predecessor of the appellants was a servant of the firm and that he was permitted to reside in the suit property in that capacity. He could never be said to be a tenant in the suit property and, therefore, the appellants could not claim any relief on that basis. It was submitted that the appeal deserved to be dismissed.

9. Having heard the learned counsel for the rival parties and upon perusal of the material brought on record, it needs to be examined as to whether the status of tenants in the suit property claimed by the appellants could be said to be sustainable.

10. The two Courts below have concurrently found that the respondent had become owner of the suit property by virtue of sale deed executed in his favour. The record shows that specific admissions given by the appellants demonstrate that ownership of the respondent in the suit property could not be denied. In fact, the compromise decree Exh.71 dated 15.12.2000

on which reliance was placed on behalf of the appellants, itself demonstrated that the sale deed executed in favour of the respondent in respect of the suit property was recognised and that, therefore, there could not be any doubt about the ownership of the respondent in the suit property.

11. The subsequent question that arose in the present case was the claim of the respondent that the predecessor of the appellants was permitted to occupy the suit property because he was in service of the aforesaid firm, which had sold the suit property to the respondent. The contesting claim of the appellants was that their predecessor was, in fact, a tenant in the suit property and that, therefore, the suit for possession and damages filed by the respondent was not maintainable. The appellants have sought to support their claim of their predecessor being a tenant by relying upon rent receipt at Exh.113 and the compromise decree at Exh.71. They also relied upon report of Commissioner brought on record in the suit culminating in compromise decree and certain entries made in municipal records in the context of payment of taxes, wherein it was stated that there were tenants in the suit property including the predecessor of the appellants.

12. The two Courts below have concurrently found that merely because the Commissioner referred to the predecessor of the appellants as one of the tenants in the suit property and only because in municipal tax records, at some places, the predecessor

of the appellants was called a tenant, could not clothe the predecessor of the appellants with the status of being a tenant in the suit property. There cannot be any dispute about the said finding rendered by the two Courts below, because the existence or otherwise of the tenancy and the status of the predecessor of the appellants as being a tenant, would have to be proved independently by appellants by placing cogent evidence on record.

13. Such evidence would necessarily require either a document showing tenancy or document to indicate an oral understanding between parties about the tenancy of the predecessor of the appellants. Such documents would be rent receipts or other similar documents to show that rent was indeed paid by the predecessor of the appellants as also the appellants to the owner of the suit property. In this context, the learned senior counsel appearing for the appellants placed much emphasis on certain terms recorded in the compromise decree dated 15.12.2000 (Exh.71). At one place in the said document, it is recorded that one of the defendants in Special Civil Suit No. 11 of 1997 i.e. Ravindra Khandelwal would have the authority to recover rent from the tenants. It was then claimed that rent receipts at Exh.113 demonstrated that annual rent of Rs.220/- was paid by the predecessor of the appellants to the said Ravindra Khandelwal and that it was indeed accepted by the said person. Only on the basis of single receipt Exh.113 read with the said terms of the compromise decree Exh.71, it was vehemently

submitted that the status of tenant was proved, which the two Courts below failed to appreciate.

14. A close look at the said two documents would show that although there is a term in the compromise decree Exh.71 to the effect that Ravindra Khandelwal would have the authority to recover rent from tenants, but the said compromise decree Exh.71 is dated 15.12.2000. This would mean that it was from the said date that Ravindra Khandelwal had authority to recover rent from tenants. But, the receipt at Exh.113 is dated 31.03.1999 wherein it is claimed that rent was paid to the said Ravindra Khandelwal by the predecessor of the appellants. This means that rent was allegedly paid to the said Ravindra Khandelwal even before any authority to receive such rent, was given to the said person under the compromise decree at Exh.71, which came into existence later i.e. on 15.12.2000. Therefore, reliance placed on behalf of the appellants on the compromise decree Exh.71 and the receipt Exh.113 to claim that their predecessor was a tenant, is wholly misplaced and it does not take their case any further.

15. Apart from this, it is correctly noted by the two Courts below that the said receipt at Exh.113 and reliance placed thereon by the appellants is in complete contradiction to the pleadings in their written statement. The appellants had boldly stated in their written statement that they were paying rent to Mohanlal Khandelwal, also a defendant in the aforesaid Special Civil Suit No.11 of 1997, which culminated in

compromise decree dated 15.12.2000 Exh.71. It was the specific case of the appellants in their written statement that Mohanlal was the person to whom the rent was being paid and further that attempts were made by the appellants to pay rent to Ravindra Khandelwal, who refused to accept the same. The appellants failed to produce even a single document to show that they ever paid rent to Mohanlal Khandelwal and on the contrary the receipt at Exh.113 produced by them showing payment of rent to Ravindra Khandelwal is in complete contradiction to their very own pleading that Ravindra Khandelwal had refused to accept the rent when it was sought to be paid to him by the appellants. The Courts below are justified in discarding the receipt at Exh.113 on the said ground.

16. Apart from this, not a single document is produced by the appellants to show that as to what attempts were ever made by them to pay the rent in the context of the suit property. It is not even their case that although they were always ready to pay the rent for the suit property but there was confusion as to who the real owner of the property was and to whom the rent was to be paid or that they had either initiated any proceedings or issued any notice to any of the parties showing their intention to pay rent for the suit property. This clearly falsifies the stand taken by them regarding the status of their predecessor being that of a tenant in the suit property and consequently they being clothed with the status of being tenants.

17. In this context, the Courts below had correctly accepted the contentions raised on behalf of the respondent that the predecessor of the appellants was permitted to reside in the suit property by virtue of being in service of the aforesaid firm from whom the respondent had purchased the suit property. On this basis, it was correctly held that the decree of possession was required to be granted in the present case because the appellants had refused to vacate the premises upon such specific submission being made by the respondent, who was now the owner of the suit property. The findings rendered by the two Courts below in this context cannot be said to be perverse and, therefore, the question of law framed by this Court is answered in favour of the respondent and against the appellants.

18. In view of the above, the instant appeal is dismissed. Consequently, the decree granted by the Courts below is confirmed. No order as to costs.

JUDGE