

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

SECOND APPEAL NO.415/2019

Radheshyam Zumbarlal Chandak

...Versus...

Sau. Vidya @ Vijaya Sushil Kolhatkar and another

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

Court's or Judge's orders

Shri A.J. Gilda, Counsel for appellant

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/02/2020

1. Heard Shri Gilda, learned Counsel for the appellant.
2. The short question involved in this matter is whether the provisions of the Maharashtra Rent Control Act, 1999, are applicable to the suit property in question, which is the contention of the learned Counsel for the appellant, against the position that it is not so, as held by both the Courts below.
3. Shri Gilda, learned Counsel for the appellant invites my attention to the judgment of the Trial Court, dated 11/10/2013, whereby the suit for eviction as filed by the plaintiff, came to be decreed, relying upon Exh.144 the agreement of tenancy, by holding, that the tenancy was only

in respect of open land, and therefore, the provisions of the Maharashtra Rent Control Act were inapplicable and the suit as filed by the plaintiff on the basis of a notice under Section 106 of Maharashtra Rent Control Act therefore was held to be maintainable. The First Appellate Court, has concurred with the finding of the Trial Court.

4. Shri Gilda, the learned Counsel for the appellant takes exception, to both the judgments. He submits that the findings by both the Courts below are perverse inasmuch as the reading of Exh.144, does not spell out the case as is made out by the Courts below. He, therefore, submits that the judgments of the Courts below also being devoid of reasons, are perverse and therefore cannot be sustained.

5. With the assistance of the learned Counsel for the appellant, I have perused the record. Both the Courts below have rendered a concurrent finding that the agreement Exh.144 which is an admitted agreement of lease dated 28/07/1978 between the plaintiff and the defendant, is in respect of open plot bearing Nazul Plot No.1/15, Sheet No.65, Deorankar Nagar, Amravati. It is not in dispute that since 28/07/1978 till date the open plot has been in continuous possession of the defendant. It is also not in dispute that the landlord has not made any construction over the same, which leads to the only logical inference that the construction of whatever nature which is there has been made by the defendant. A copy of the agreement of lease

dated 28/07/1978, was produced by the learned Counsel for the appellant and a perusal of the same demonstrates that only open land was let out and nothing else. That being so, the findings as rendered by the learned Courts below cannot be faulted with. A perusal of the judgment of the learned First Appellate Court demonstrates that this position has been taken note of by him in the judgment which is reason enough to reverse the finding of the Trial Court, which is based upon an erroneous reading of the admitted document at Exh.144. That being the position, no substantial question of law is involved or made out. The second appeal is, therefore, without any merits and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE

Wadkar, P.S.