

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.761 of 2012

SUKHADEO RAMA JADHAV
VERSUS
KISAN BALAJI MALVE

.....
Advocate for Appellant : Mr. P. K. Palve
Advocate for Respondent : Mr. Rahul Joshi
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 16-09-2021.

ORDER :

1. Present appeal has been filed by the original defendant challenging the concurrent Judgment and decree. Present respondent had filed Regular Civil Suit No.26 of 2000 before Civil Judge Junior Division, Sillod, Taluka Sillod, District Aurangabad, for possession and arrears of rent. The said suit came to be decreed on 15-04-2006. The present appellant challenged the said Judgment and decree by filing Regular Civil Appeal No.213 of 2008. The said appeal was heard and dismissed by learned District Judge-3, Aurangabad on 14-09-2010. Hence, this second appeal.

2. Heard learned Advocate Mr. P. K. Palve for appellant and learned Advocate Mr. Rahul Joshi for respondent. In order to cut short, it is

stated that both of them have made submissions in support of their respective contentions.

3. It is admitted that the Maharashtra Rent Control Act or the then Bombay Rent control Act were not applicable to the suit property and, therefore, the suit for arrears of rent and possession came to be filed under the provisions of the Transfer of Property Act. It is not in dispute that plaintiff is the owner of the suit property consisting of four rooms. The plaintiff had come with a case that monthly rent of the four rooms was Rs.400/- and it was given to the defendant. The defendant has not paid the rent since 1995. It is also stated that initially the rent period was limited but then it was extended or renewed from time to time. Plaintiff also contends that he is in need of premises and, therefore, he issued notice to the defendant on 07-05-1999 and directed the defendant to handover the possession. Again a notice was issued on 01-11-1999. Hence, the suit.

4. The defendant in his written statement contended that though initially the plaintiff was the owner of the suit premises, yet he agreed to sell the suit premises for a consideration of Rs.25,000/- on 15-08-1995. He had paid earnest amount of Rs.1000/- at that time,

later on further amount of Rs.19000/- has been paid. He was ready and willing to perform his part of the contract by giving remaining amount of Rs.5000/-. It was then contended that the initially the rent was Rs.20/- per month but after the said agreement, the plaintiff had not claimed the rent amount. He, therefore, prayed for dismissal of the suit.

5. As aforesaid, the Trial Judge has come to the conclusion that the defendant is in arrears of rent from January 1995 to 31-10-1999 to the extent of Rs.13600/-. Plaintiff requires the suit premises bonafide for his use and occupation. The notice is legal. Defendant has failed to prove that the plaintiff had agreed to sell the suit property to him and, therefore, the suit came to be decreed. The appeal filed by the present appellant came to be dismissed.

6. When basically the defendant has agreed that his induction in the suit premises was as tenant then unless he proves that in view of the agreement to sell now he is possessing the said property under Section 53-A of the Transfer of Property Act. It is to be noted that no such agreement has been produced and proved by the defendant. The agreement to sell as per the contention of the defendant appears to be the oral agreement executed on 15-08-

1995. The amendment to Section 53-A of the Transfer of Property Act came in the year 2000 which makes it compulsory that there should be written agreement to claim protection under the said section. Even if we consider that since the alleged date of agreement is prior to the amendment to Section 53-A of the Transfer of Property Act, it can be seen that when possession is stated to be confirmed by way of such agreement then such agreement ought to have been registered one and that too on a sufficiently stamped paper. It also appears that defendant had tried to contend at another breath that in fact the transaction that had taken place on 15-08-1995 was sale transaction. Even if for the sake of arguments we accept, yet the value was more than Rs.100/- and, therefore, such document of sale should be compulsorily registered, therefore on any count his contention fails.

7. Definitely, the evidence that is adduced by the plaintiff and the fact that the defendant's induction in the suit premises was on the basis of tenancy and admittedly he is in arrears of rent since January 1995, the Courts below have correctly decreed the suit and dismissed the appeal respectively. Both the Courts below on the appreciation of the evidence have come to the conclusion that the

notices those were issued by the plaintiff for eviction under Section 106 of the Transfer of Property Act is legal and valid. The decision does not call for any interference. No substantial questions of law are pointed out by the appellant as contemplated under Section 100 of the Code of Civil Procedure, the appeal deserves to be dismissed, accordingly, it is dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

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by GAWADE
VIRENDRA J
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