

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 626 OF 2019

Yadav s/o Tukaram Khade

... Appellant
(Orig. Deft.No.1)

Versus

Smt. Kashibai w/o Gyanba Bhavare and others ... Respondents

....

Mr. P N. Kalani, Advocate for the appellant

....

CORAM : R. G. AVACHAT, J.

DATED : 06th APRIL, 2021

O R D E R :-

1. The challenge in this appeal is to the judgment and decree dated 30.08.2013 passed by the Civil Judge, Junior Division, Kalamnuri, in a suit, Regular Civil Suit No.34 of 2011 and confirmed by the judgment and decree dated 27.08.2019 passed by the District Judge-1, Hingoli in Regular Civil Appeal No.47 of 2013. By the impugned judgment and decree, the appellant (original defendant No.1 in the suit) has been directed to vacate/hand over possession of the suit premises to the respondent Nos. 1 to 3 herein (plaintiff and defendant Nos. 2 and 3 in the suit).

2. It is the case of the plaintiff that the suit premises were let out to the appellant herein in 2005. The period of lease was for

11 months. On the lease period having been over, the possession of the appellant became in a capacity as a tenancy by sufferance. The possession was also asked for on the ground of *bona-fide* requirement and default in payment of rent. In the alternative, the possession was also sought on the ground of title.

3. The trial Court decreed the suit holding that the provisions of the Maharashtra Rent Control Act do not apply. The suit was governed by the provisions of Chapter V of the Transfer of Property Act, 1882 (for short, 'the T.P. Act'). The trial Court held, the appellant to have been in possession of the suit premises as a lessee. On efflux of the period of lease, he is liable to vacate the suit premises. It has also been held that the appellant denied the title of the plaintiff (true owner) and therefore, became liable to be evicted from the suit premises on the ground of disclaimer of title. The trial Court held the plaintiff and original defendant Nos.2 and 3 (respondent Nos.1 to 3) to be owners of the suit premises. Since the appellant do not have any right, title and interest in the suit premises, he was directed to hand over its possession in favour of its owners, respondent Nos. 1 to 3. The first appellate Court confirmed the judgment and decree passed by the trial Court.

4. Shri P. N. Kalani, learned Advocate appearing for the appellant herein, would submit that both the impugned judgments and the decree are inconsistent with the evidence in the case. The appellant was said to be a tenant in the suit premises at monthly rent of Rs.3,000/-. He is alleged to be in arrears of rent. In the plaint, however, there is no claim for grant of arrears of rent. The appellant has been occupying the suit premises since 1983. An agreement of sale has been executed in his favour. He was ready and willing to perform his part of the agreement. In view of principle of part performance, he is entitled to continue with the possession of the suit premises. The suit was also bad for non joinder of necessary parties, since legal representatives of one of the co-owners of the suit property had not been made parties to the suit. The appellant before the first appellate Court had urged for remand of the suit with a view to give him an opportunity to prove the agreement for sale executed by original defendant No.2 in his favour. The learned Advocate has placed on record a draft of substantial questions of law, said to have arisen in the present Second Appeal. He, therefore, urged for admission of this Second Appeal.

5. I have considered the submissions made by the learned Advocate. Also perused the impugned judgments.

Admittedly, the suit premises originally belonged to Ukandi Dhondba Muneshwar. Respondent Nos. 1 to 3 (Plaintiff and defendant Nos. 2 and 3 in the suit) being his daughters, inherited the suit premises on his demise. The deceased Ukandi had one son, by name Pandurang. It is in the evidence that he is no more and his legal representatives are untraceable. It needs no mention that one of the co-owners can file suit for possession.

6. Admittedly, provisions of the Maharashtra Rent Control Act, do not apply to the present case. It is a case of lease under Section 105 of the T. P. Act. The plaintiff had come with a case to have given the suit premises to the appellant on lease for 11 months. The witness examined on behalf of the appellant, admitted the appellant to be a tenant in possession of the suit premises. Since it is a case of lease under Section 105 of the T. P. Act, for a fixed period of duration of 11 months and on efflux thereof, the appellant (lessee) has become liable to vacate the leased premises. The suit has also been decreed alternatively on the ground of title.

7. The appellant although entitled to raise as many defenses as he could, he came with some inconsistent/mutually exclusive pleas. He, even claims title to the suit premises on the basis of adverse possession. He also claimed to have purchased the suit premises from its original owner Muneshwar. Another claim raised by the appellant is that of having been in possession of the suit premises, pursuant to the agreement of sale executed by respondent No.3 (Defendant No.3). Before the trial Court, the appellant did not produce any document evidencing to have purchased the suit premises from its original owner. Before the appellate Court, he urged for remand of the suit with a view to give him opportunity to prove agreement for sale executed by respondent No.3. The first appellate Court has rightly negated his claim. As such, it is a case of the appellant being in possession of the suit premises without any right, title and interest either in the nature of ownership, lease or part performance. The trial Court rightly decreed the suit. The appellate Court confirmed the same.

8. I do not find any perversity in the impugned judgments and the decree. In my view, no substantial question of law arises in

this Second Appeal. The appeal is therefore liable to be dismissed.
The Second Appeal is therefore, dismissed.

9. The prayer for continuation of interim relief stands rejected.

10. In view of dismissal of the Second Appeal, civil application No.14240 of 2019 does not survive, therefore, same is disposed of.

[R. G. AVACHAT, J.]

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