

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 145 OF 2019

Shreevallabh S/o. Dongardas Sikchi,
Aged about 77 years, Occ.: Business,
R/o. Mofussil Plot, Morshi Road, Opp.
Sahakar Bhavan, Taluka and District:
Amravati.

.... **APPELLANT.**

// VERSUS //

Vivekkumar S/o. Surendralal Shah,
Aged about 60 years, Occ. Saurabh
Cafe Opp. Sahakar Bhavan, Morshi
Road, Amravati, Taluka and District
Amravati.

.... **RESPONDENT.**

Shri Akshaya Sudame, Advocate for Appellant.
Shri O.W.Gupta, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 28, 2021

ORAL JUDGMENT :

1. The challenge raised in the present appeal is to the judgment and decree passed by Principal District Judge, Amravati in Regular Civil Appeal No. 165 of 2015, dated 15/11/2017 dismissing the appeal and thereby upholding the judgment and decree dated 29/09/2015 passed by the Extra-Joint Civil Judge Senior Division, Amravati in Regular Civil Suit No. 41 of 2011, dismissing the suit filed by the appellant/ plaintiff for recovery of possession of the suit property by ejecting the defendant.

2. Brief facts of the present case for consideration of the controversy involved in the present appeal, are as follows. (The parties are referred as per their status before the trial Court):

3. The plaintiff filed suit for recovery of possession of the suit property i.e. an open space admeasuring 4 to 5 feet at the front portion of northern lane in Nazul Plot No.1/3 in Sheet No.56-D of Peth, Amravati within the limits of Municipal Corporation, Amravati, by ejecting the defendant who is in occupation of the suit property. It is the case of the plaintiff that he is owner of the suit

property and father of the plaintiff let out the suit space to the defendant in the year 1982-83 for carrying out business of stationary by erecting wooden stall in to 4x5 feet area. The father of the plaintiff expired in the year 1993 and the plaintiff on becoming landlord of the suit property, issued notice under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the Act of 1999”) on the ground that after March 1997 the defendant stopped paying the rent to the plaintiff. However, on realizing that the suit property does not cover by the definition “premises” given in the Act of 1999, fresh notice under Section 106 of the Transfer of Property Act, 1882 was issued and thereby the defendant was called upon to vacate the suit property till midnight of 31st August 2010 and to remove unauthorized structure. However, on failure to vacate the premises by the defendant, the plaintiff filed a suit for eviction and possession.

4. The defendant filed his written statement and raised preliminary objection that the suit property is controlled by the provisions of the Maharashtra Rent Control Act and therefore, the suit is not tenable in the form in which it was filed.

5. The learned trial Court, after considering the oral as well as documentary evidence available on record, dismissed the suit on the ground that the suit property, which is an open space, can cover under the term “premises” as defined under Section 7(9) of the Act of 1999 and therefore, the suit is not maintainable.

6. The plaintiff, feeling aggrieved by the judgment and decree dated 29/09/2015 passed by Extra Joint Civil Judge Senior Division, Amravati in Regular Civil Suit No.41 of 2011 carried an appeal before the District Judge at Amravati vide Regular Civil Appeal No.165 of 2015 which came to be dismissed vide impugned judgment and decree dated 15/11/2017 upholding the findings recorded by the learned trial Court that the suit property is covered by the definition “premises” under the Maharashtra Rent Control Act. The said judgment and decree is under challenge in the present appeal.

7. I have heard the learned counsel for the respective parties.

8. This Court, while admitting the present appeal, has framed substantial question of law vide order dated 20th August 2019 while admitting the present appeal. The substantial question of law, as framed is as follows:

“Whether the suit property is premises within the meaning of Section 7(9) of the Maharashtra Rent Act?”

9. Shri Sudame, learned counsel for the appellant/plaintiff submits that both the Courts below have misinterpreted the provisions of Section 7(9) of the Maharashtra Rent Control Act and wrongly held that the suit premises is covered by the said provision and therefore, the suit is not maintainable.

10. It is pointed out that the judgments cited on this point have also not been considered properly and though the Hon’ble Supreme Court and the various High Courts have held that the open space which is not part of the building cannot be termed as “premises”, both the Courts below have held otherwise.

11. Shri Sudame, learned counsel for the appellant has placed his reliance on the following judgments of the Hon'ble Supreme Court and various High Courts:

- i) *Krishnapasuba Rao Kundapur (dead) after him his l.r. and another, .vs.Dattatraya Krishnaji Karani*¹,
- ii) *Morarji Goculdas Deoji Trust and others ..vs. Madhav Vithal Kudwa*²,
- iii) *Gandas vs. Harshvardhan*³,
- iv) *Pradeep Ad Agency..vs..Sri Aurbindo Circle*⁴,
- v) *M/s. Auto Hirers ..vs. C.C.Co-op. Society*⁵,

12. Per contra, the learned counsel appearing for the respondent/ defendant submits that both the courts below have rightly interpreted the definition of the word “premises” given in the Act of 1999 and no error has been committed by both the Courts below while holding that the suit was not maintainable in the form in which it was filed.

1 AIR 1966 SC 1024,
2 AIR 1983 Bom. 68,
3 2003(1) Mh.L.J. 203,
4 2015(2) Mh.L.J. 167,
5 2018(3) Mh.L.J. 942.

13. It is submitted that the interpretation of Section 7(9) of the Maharashtra Rent Control Act, 1999, as made by both the Courts below, cannot be faulted with as the Supreme Court of India in the case of *Harish Chandra vs.. Mohd Ismail*⁶, has held that tin shed falls within the connotation of the term “building” under the U.P. Rent Act. The definition of the word “building” given in U.P. Rent Act is *pari materia* with the definition of “premises” under the Act of 1999 and therefore the law laid down in the case of *Harish Chandra* (supra) is squarely applicable to the present case.

14. Shri Gupta, learned counsel for the respondent/ defendant submits that earlier notice issued under the Rent Control Act was withdrawn and fresh notice under Section 106 of the Transfer of Property Act, 1882 was issued and because the earlier notice, which was issued under Section 15(1), for non-payment of rent and since it was complied with by making payment of arrears of rent, now, the plaintiff cannot pursue the suit for eviction against the defendant. For this purpose, he has placed reliance on the judgment of Full Bench of this Court in the case of *Babulal vs. Suresh*⁷.

⁶ (1990) 4 SCC 493

⁷ 2017(4) Mh.L.J. 406

15. To consider the rival contentions of the parties, I have carefully perused the record and gone through the judgment cited by both the parties.

16. On perusal of the record, it is revealed that the suit property is an open space admeasuring 4x5 feet and the defendant is in possession of the same from the year 1982-83. The rent receipts, which were issued by the plaintiff to the defendant on payment of rent, show that the rent was paid by the defendant for the open space and none of the rent receipt does mention tin shed.

17. The Hon'ble Supreme Court in the case *Krishnapasuba Rao (supra)* in paragraph 7 has held as under:

“7. Clause 2 of the rent note dated August 28, 1943 covered the entire City Survey No.1577/17, but we are now concerned only with the letting of the portion of the property excluding the shop on the northeastern corner. The rent note stated that the subject-matter of this letting for which the rent was payable by the tenant was open land with a “khatta”. It is common case before us that “khatta” is not a building. Clause 1 stated that on a portion of the land the tenant had built a shed of corrugated iron sheets at his own cost. Clause 5 stated that on the

*termination of the tenancy the tenant would remove the structures raised by him including the timber the pillars, the iron materials and the stores used for paying the floor. On a plain reading of the lease, it is clear that the subject-matter of the letting was open land and the rent was payable in respect of the open land only and not in respect of the structures raised by defendant No.1. We were referred to decisions in respect of building leases. It is a question of construction of a building lease whether the lease is a demise of the land only, or whether it is a demise of the land together with the building to be constructed by the tenant. See *Bhatia Co-operative Housing Society Ltd. v. 12.V.D.C. Patel*, 1953 SCR 185 at pp 194-196: (AIR 1953 SC 16 at pp. 20-21); *Dr. K.A. Dhairvawan v. J. R. Thakur*, 1959 SCR 799 at pp. 803-808. (AIR 1958 SC 789 at pp 791-794). In this case, we are not concerned with a building lease. The building on the land was constructed by the tenant at this own cost before the execution of the rent note. The building belonged to the tenant and was not the subject-matter of the letting. The land only was the subject-matter of the letting. Consequently, the premises are land within the meaning of S.13(1)(i).” (Emphasis supplied)*

18. This Court at Principal Seat in *Morarji Goculdas Deoji*

Trust (supra) has observed as under:

“....

"Meaning of 'house', 'messuage' and 'appurtenances'.

"By a lease of a 'house' outbuildings occupied with and necessary for the convenient occupation of the house will pass, and also a courtyard, garden and

orchard. 'Messuage' has the same meaning as 'house'. In the expression 'house and premises', 'premises' refers only to matters intimately connected with the house. The words 'with the appurtenances' do not extend the demise so as to include land or buildings which are used with the demised property, but are not parcel of it; nor do they include a part of the building which has been separated from it and has not been occupied with it for many years previous to the demise.

The words 'lands appertaining to' or 'lands belonging to' are more easily extended to land usually occupied with the demised premises."

19. This Court in Gangdas (supra) in paragraph 13 held as under :

"13. It is pertinent to note that the definition of expression 'premises' given in the Act clearly indicates that the Act is not applicable to open lands and it applies to the buildings and structures and parts thereof used as separate premises for residence, education, business, trade or storage." (Emphasis supplied)

20. This Court in the case of *Pradeep Advertising* (supra) in paragraph Nos. 4 has observed as under:

"4. Section 7(9) of the said Act, being relevant, is reproduced below :

"Section 7(9) :

"premises" means any building or part of a building

let or given on licence separately (other than a farm building) including.:

(i) the gardens, grounds, garages and outhouses, if any, appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house.”

It is apparent that the “premises” under Section 7(9) of the Maharashtra Rent Control Act comprise the building or part of a building, let or given on licence separately, including the gardens, grounds, garages and outhouses, etc., appurtenant to such building or part of a building. In view of this, mere open space, ground or garden let out or given on licence without letting out any building or part of a building to which it is appurtenant, is not covered by the definition of “premises” under Section 7(9) of the said Act. Therefore, I do not find any illegality in the judgments and orders passed by both the Courts below.” (Emphasis supplied)

21. This Court at Principal Seat in *M/s. Auto Hirers* (supra) in paragraph No.13 has observed as under:

“13. A plain reading of the above provision clearly indicates that for the purposes of the MR Act 1999, premises would be any building or part of a building which is let out or given on licence separately which may include garden, ground, garages and out houses if any, appurtenant to such building or part of a building, as sub-clause (i) of the provision would provide. As also it would include any fitting affixed

to such building or part of a building provided for the more beneficial enjoyment of the premises. Thus, considering the clear language of the said definition, simplicitor "open plot of land" certainly does not fall within the definition of 'premises'. Thus, there is much substance in the contention as urged on behalf of the respondent as also correctly held by the Courts below that the suit plot being an open of land would not fall within the definition of 'premises', considering the agreement between the parties, as the suit plot is not appurtenant to any tenancy of a building or a structure which is let out to the applicant. It is not a case of the applicant that some tenement in the structure/building of the respondent society is let out to the applicant under the lease agreement dated 28th March, 1986 to which this open plot is appurtenant. The provision is required to be read in its entirety to ascertain the legislative intent. There cannot be any isolated reading of the word "appurtenant" as falling in sub-clause (i) of the definition of premises. If an interpretation as contended on behalf of the applicant is to be accepted, it would be nothing but doing violence to the legislative intent, so as to include something which the legislature has categorically avoided to include namely, "tenancy of an open plot of land." (emphasis supplied)

22. After going through the judgments referred above, I have no hesitation to hold that mere open space, ground or garden independently cannot be a "premises". It is only "building" a part of building which is let out or given on licence separately which may

include garden, ground, garages and out houses, if any, appurtenant to such building or part of building would constitute “premises”.

23. In this matter, admittedly, predominant purpose was to let out open space and not building or part of the building and therefore, it cannot be held that the suit property is covered by definition “premises” under the Rent Control Act.

24. As far as judgment in the case of *Harish Chandra* (supra) cited by the learned counsel for the respondent/ defendant the same is distinguishable on facts as in the present case predominant purpose of letting was an open space and there is no mention of any tin shed in any of the rent receipts, like in the aforesaid case. Therefore, according to me, this judgment would not apply to the facts of the present case.

25. Moving to the next contention of the respondent that on compliance of notice under Section 15(1) of the Act of 1999, no proceedings for eviction is maintainable. The present suit was filed

in pursuance to notice under Section 106 of the Transfer of Property Act, 1882 and unless the plaintiff files a suit under the provisions of the Act of 1999, the question whether the suit is maintainable under the Act of 1999 would not arise. Hence, I do not find any merit in the contention raised by the learned counsel for the respondent.

26. Having held that the suit property is not covered by the definition “premises” given under the Maharashtra Rent Control Act, 1999, I find substance in the submission of the learned counsel for the appellant that the suit in the present form is maintainable. Accordingly, I pass the following order:

- i) The appeal is **allowed**.
- ii) Judgment and decree dated 15/11/2017 passed by District Judge, Amravati in Regular Civil Appeal No. 165 of 2015 and judgment and decree dated 29/09/2015 passed in Regular Civil Suit No.41 of 2011 passed by Extra-Joint Civil Judge Senior Division, Amravati are hereby quashed and set aside.

- iii) The matter is remanded back to the trial Court for a decision afresh.
- iv) It is made clear that the parties are at liberty to amend the pleadings and further they are permitted to lead additional oral evidence, if they so advised.

The appeal stands **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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