

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

WRIT PETITION NO.81/2018

PETITIONER : Shri Ganesh s/o Manikrao Nimje,
(Ori. Defendant/ aged about 45 years, Occupation Labour,
Ori.Appellant) R/o Kuhi, Ward No.3, Tah. Kuhi,
Distt. Nagpur.

...VERSUS...

RESPONDENTS : 1. Shri Shailendra s/o Barsuji Hatwar,
(Ori.Plaintiffs/ Aged about 30 years, Occupation
Ori. Respondents) Agriculturist.

2. Shri Ravindra s/o Barsuji Hatwar,
Aged about 26 years, Occupation
Agriculturist.

Both R/o Kuhi, Ward No.3,
Tahsil Kuhi, District Nagpur.

Mr. K.B. Ambilwade, Advocate for petitioner
Mrs. Vijaya P. Thakre, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 11/02/2021
Judgment pronounced on : 16/02/2021

J U D G M E N T

1. Heard. Rule. Rule made returnable forthwith.
2. This is a petition by the original defendant before the learned Trial Court, against whom a suit for eviction and possession

filed by the respondents came to be decreed by the learned Trial Court by a judgment and decree dated 31/12/2014, which has been affirmed by the Appellate Court by the judgment and decree dated 18/7/2017, both concurrently holding that the petitioner was a tenant in the suit premises.

3. Mr. Ambilwade, learned Counsel for the petitioner does not dispute that the petitioner was a tenant in the house bearing No.372, situated at Mouza Kuhi, Ward No.3, when the said house property, was owned by Sudhakar Pamaji Dhande and Smt. Kusumtai Harishchandra Padole, who admittedly were the landlords, and a relationship of landlord and tenant existed between them.

4. It is contended by the learned Counsel Mr. Ambilwade, that on 7/9/2007, Sudhakar Pamaji Dhande and Smt. Kusumtai Harishchandra Padole the erstwhile landlords executed a sale-deed of the said house property in favour of the present respondents. It is submitted that the original landlords, did not issue any notice to the petitioner intimating the sale of the said house property to the

respondents, due to which it is contended that the petitioner refused to accept the respondents as his landlords, in spite of a notice of attornment dated 18/9/2007, issued by the respondents to the petitioner, due to which the provisions of Section 111 (g) of the Transfer of Property Act, 1882 (for short “the T.P. Act” hereinafter) became applicable, as a result of which the suit as filed by the respondents for eviction and possession was not maintainable. It is further submitted that due to this refusal to accept the respondents as his landlords the petitioner did not make payment of any rent to them. He further submits that the petitioner though willing to purchase the suit house property, the erstwhile landlords, had not agreed for the same. He submits that there were several attempts to dispossess the petitioner from the suit property which have been resisted. He submits that the Trial Court did not have jurisdiction to entertain and try the suit.

5. Learned Counsel Mr. Ambilwade further submits that the suit is bad for non-joinder of necessary parties and therefore ought to have been dismissed by the Trial Court and the Appellate Court also erred in not considering this proposition. He further

submits that the issue of a relationship of landlord and tenant between the parties has not been decided by the Courts below. He also submits that the framing of issues by the learned Trial Court and points by the Appellate Court would indicate that the suit was not one under the Maharashtra Rent Control Act, 1999, but on the regular side under the Civil Procedure Code, as there is no requirement of framing of issues in proceedings under the Maharashtra Rent Control Act, which are tried by the Small Causes Courts in its summary jurisdiction, which in the present case is conferred upon the Civil Judge, Junior Division, Kuhi, Tah. Umred, Distt. Nagpur. He therefore submits that the petition ought to be allowed and the judgments and decrees as passed by both the Courts below are liable to be quashed and set aside.

6. Mrs. Thakre, learned Counsel for the respondents supports the judgments of the Courts below and submits that the plea of denial of title, as is being set up by the petitioner, is spurious and is not reflected from the pleadings of the parties. She submits that the provisions of Section 111 (g) of the T.P. Act are not at all attracted in the present matter. The petitioner in spite being aware

of the acquisition of title by the respondents over the said house property, and the notice of attornment dated 18/9/2007, intentionally did not vacate the same, in spite of the need of the respondents, as spelt out before the Courts below, which has been accepted. She submits that the petition is without any merits and is liable to be dismissed.

7. It is not disputed as reflected from the pleadings of the parties that on 7/9/2007, Sudhakar Pamaji Dhande and Smt. Kusumtai Harishchandra Padole the erstwhile landlords executed a sale-deed of the said house property in favour of the present respondents, rather on the contrary, the petitioner in his written statement, Exh.14 before the Trial Court has accepted the execution of the sale-deed dated 7/9/2007, in favour of the respondents, in the following words :-

“It is not denied that, plaintiff had purchased the house property bearing G.P. House No.372 situated at Mouza Kuhi, in Ward No.3, P.H. No.53, Tah. Kuhi, Distt. Nagpur, Sheet No.4 bearing City Survey Bhumapan No.225, area 115.5 sq. meters from

previous owner namely Shri Sudhakar Pamaji Dhande and Smt. Kusumtai Harishchandra Padole as per sale-deed dated 07/09/2007.”

The petitioner however had set up a plea, that the sale-deed was challenged by him as null and void and not binding upon him, in Regular Civil Suit No.7/2008. The fate of this suit is not known. It is in light of the above statement by the petitioner, that the applicability of the provisions of Section 111 (g) of the T.P. Act, has to be tested. Under the provisions of Section 111 (g) (2) of the T.P. Act, a forfeiture would occur in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. A perusal of the written statement of the petitioner, as placed on record, would indicate that none of these things have been done by the petitioner. The written statement does not indicate that title has been set up in a third person or claimed by the petitioner himself, rather on the contrary, by accepting the execution of the sale-deed dated 7/9/2007, the transfer of title of the said house property by the erstwhile owners/landlords, in favour of the respondents, has been accepted by the petitioner. That being the situation, the plea as raised by learned Counsel

Mr. Ambilwade, about applicability of Section 111 (g) of the T.P. Act is clearly unsustainable in law.

8. The next contention by learned Counsel Mr. Ambilwade, that the issue of relationship of landlord and tenant has not been decided, is also without any merits for the reason, that a specific point of determination was framed by the Trial Court in para 4 (1) of its judgment, which has been considered and answered in paras 7 to 13 thereof. The learned First Appellate Court has also framed point no.1 in para 6 in this regard in its judgment and has considered the same in paras 8 to 11 and both have answered the same in the affirmative that the relationship of landlord and tenant exists between the parties.

9. The next plea of non-joinder of necessary parties is also without any merits, for the reason that who are these necessary parties, whose joinder was a must for adjudication of the issue in the suit, is not disclosed, in view of which, the plea fails.

10. Learned Counsel Mr. Ambilwade, further submits that because the learned Trial Court framed issues as is indicated in para 4 of the judgment and so also as the First Appellate Court framed points for determination, as indicated in para 6 of its judgment, the suit has been treated as a regular suit, and not as one under the Maharashtra Rent Control Act. The submission is not well founded. Merely because the points for determination have been framed by the Courts below for rendering answers to the same, that in itself, does not take out the suit, outside the ambit of the Maharashtra Rent Control Act, 1999.

11. Though in the written statement the plea has been raised that the petitioner as a tenant had a preferential right to purchase the said house property, the plea is only to be stated to be rejected, as no such right has been created either under the Maharashtra Rent Control Act or any other statute. No other point was urged. It is also material to note that the respondents along with their submissions, have placed on record a possession receipt dated 19/12/2018, whereunder, in execution proceedings they have been delivered the vacant possession of the suit property by the

Court bailiff. Mr. Ambilwade, learned Counsel for the petitioner, claims ignorance in this regard, in spite of the submissions being filed on record on 20/2/2019, of which the possession receipt of 19/12/2018, is a part.

12. The judgments of the Courts below are well reasoned and take into consideration all the aspects of the matter and do not call for any interference. There is therefore no merit in the writ petition and the same is accordingly dismissed.

Rule stands discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar

Shailendra
Wadkar

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