

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

SECOND APPEAL NO. 517 OF 2022

1. Rameshwar Hiralal Vyas,
Died Through his Legal Heirs,
- 1-A. Laherabai Rameshwar Vyas,
Age : 90 years, Occu. Business,
- 1-B. Prakash Rameshwar Vyas,
Age : 56 years, Occu. Business,
- 1-C. Liladhar Rameshwar Vyas,
Age : 53 years, Occu. Business,
- 1-D. Sanjay Rameshwar Vyas,
Age : 48 years, Occu. Business,
All R/o. Survey No. 510/4, Plot No. 5,
Shivajinagar, Dalphad, Jalgaon,
Taluka and District : Jalgaon.

**...Appellants
[Orig. LR of Defendant]**

Versus

1. Kishor Narayan Bhusari,
Age : 70years, Occu. Business,
2. Shrikant Narayan Bhusari,
Age : 66 years, Occu. Business,
3. Suvarna Vilas Agashe,
Age : 61 years, Occu. Household,
All R/o. 82, Baliram Peth, Jalgaon,
Taluka and Dist. Jalgaon.

**...Respondents
[Orig. Plaintiffs]**

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Mr. V. D. Hon, Sr. Counsel i/b Mr. Anand I. Deshmukh, Advocate for
the appellants
Mr. Vijay B. Patil, Advocate for respondent Nos. 1 and 3
Mr. V. J. Dixit, Sr. Advocate i/b Mr. Sushant Dixit, Advocate for
respondent No. 2

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CORAM : RAJESH S. PATIL, J.
DATE : 13.12.2022

JUDGMENT : -

***Challenge* : -**

1. This Second Appeal is filed against concurrent finding of both the Courts below by original defendants in a suit for recovery of possession.

***Facts* : -**

2. The original plaintiffs (the respondents) herein, had, in the year 2007, filed a suit for possession and *mesne* profit of plot no. 5, adm. 6960 sq.ft. from land out of Survey No. 510/4, situated within the jurisdiction of Municipal Corporation, Jalgaon. It was the case of the original plaintiffs that pursuant to a Leave and License Agreement dtd. 24.10.1968, the said plot was given on License to the defendant – Rameshwar, for a period of 20 years. Original plaintiffs sent a notice dtd. 15.11.2003 to the original defendants (petitioners herein) and thereby terminated the license. The defendants replied to the said notice and had admitted that they have made construction over the suit property. As the defendants did not vacate the suit land, the suit for recovery of possession was filed by the plaintiffs. Evidence was led orally and documents were produced on record including the document of Leave and License Agreement, copy of
sgpunde

Notice, copy of Notice Reply. After evidence was led by both the sides, the trial Court was pleased to decree the suit and direct the defendants to hand over peaceful possession of the suit land to the plaintiffs.

3. Against the judgment and order passed by the trial Court, the appellants herein filed Reg. Civil Appeal before the District Court. Even the said appeal filed by the appellants herein was dismissed by the District Court.

Submissions : -

4. Against the concurrent finding of both the courts below, the present Second Appeal has been filed by the appellants / original defendants. The first contention of the Senior Counsel Mr. V. D. Hon for the appellants was that, the suit was not maintainable before the Courts below as the defendants were protected by the Maharashtra Rent Control Act, 1999 [hereinafter referred to as "MRC Act"]. So also, it was stated that the definition of premises in the MRC Act included the suit premises. The second contention of the appellants was that Section 24 of the MRC Act prohibited a suit to be filed before the Civil Court. The third contention of the appellants was that earlier to the appellants, one Mr. Keshrimal Dalwale was in possession of the suit premises and he had made construction over it, therefore, what was given to the appellants after Mr. Keshrimal

Dalwale vacated the premises in the year 1968, was a land over which there was construction. The appellants, in order to buttress their contentions, also referred to the judgments in the case of **Hindustan Ferrodo Ltd. Versus Hari Lachman Hasija** reported in 2003(5) Bom.C.R. 790.

5. The senior advocate Mr. Dixit and Mr. Patil for the respondents / owner of the land opposed the submissions of the appellants and stated that, the main document to consider in this litigation was the Leave and License Agreement dated 24.10.1968. The clauses in the agreement were clear that what was given to the appellants / original defendants was the open piece of land. He further argued that the notice reply which was sent by appellants herein very clearly mentioned that there was no preexisting structure on the open land given to them. It is further argued by the learned senior counsel for the respondents (original plaintiffs) that Section 24 of the MRC Act does not help the appellants since, Section 24 only applies to residential premises. The suit premises in the present matter is a open plot of land, and it is case of Appellants (Original Defendants) that they are running Dal Mill on the said plot of land.

Analysis : -

6. I have carefully considered the submissions advanced by

both the parties and the impugned orders passed by both the courts below. The document to be considered in this second appeal is the Leave and License Agreement dtd. 24.10.1968. The said Leave and License Agreement for the suit premises was for 21 years. The recitals of this agreement clearly stated that what was offered to the defendants was open piece of land. In fact, the earlier lease deed of the respondents with one Mr. Keshrimal Dalwale also mentions that it was a piece of land. Therefore, the contention of the appellants that what was given to them was open piece of land with a structure standing over it, is not correct. So also, it will be important to note that before filing the suit in the year 2007, a notice was issued on 15.11.2003 by the respondents to the appellants for eviction. The appellants sent their reply to the said notice and in that reply there is no mention that there was a preexisting structure on the plot of land offered to them. Therefore, the claim of the appellants that they are covered by the definition of premises as mentioned in the MRC Act cannot be granted, since open plot of land is not covered under the definition of premises under the MRC Act.

7. It is also pertinent to note that the appellants have filed a separate suit being R.C.S. No. 273/2021 for declaring them as owners by adverse possession of suit plot. Filing of such suit and claiming adverse possession itself will throw away the defence raised in the

present litigation.

8. So also, the contention of the appellants that they are protected in view of Section 24 of the MRC Act does not hold ground. In my view, no case is made out by the appellants that they are covered under Section 24 of MRC Act, because Section 24 covers only residential premises. Admittedly, the suit plot is not a residential premises.

9. Therefore, once the license period has come to an end by efflux of time and there is termination by issuance of notice, the Appellants have no room to remain in the suit land.

10. The judgment referred to by the appellants in the case of Hindustan Ferrodo (supra) does not help them because the said judgment is as regards a flat on the 4th floor of a building in Mumbai.

11. No error is found in the findings recorded by both the courts below. No substantial question of law is involved. Therefore, the second appeal is dismissed.

[RAJESH S. PATIL]
JUDGE