

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

SECOND APPEAL NO. 289 OF 2013

APPELLANT: Sukhdev Surjan Satyasevak,,
Org.Deft aged about 69 years, Occ. Labourer
R/o. Marartoli, Tah. Dist. Gondia.

...VERSUS...

RESPONDENTS: Lahanabai w/o Pentar Satyasevak
(deceased thr L.Rs.)

1A.Pruthviraj Penter Satyashewak (son)
(deceased) thr L.Rs.

- i. Smt. Manika wd/o Prithviraj Satyashewak,
(wife), aged about 65 years, Occ.
Household.
- ii. Sadanand s/o Prithviraj Satyashewak,
(son) (deceased) thr L.Rs.
- iiia. Smt.Ratnamala wd/o Sadanand Satyashewak,
(wife) aged about 45 years, Occ.
Household.
- iiib. Prashant s/o Sadanand Satyashewak,
(son) aged about 22 years, Occ.
Student (legal heir of Sadanand Prithviraj
Satyasevak,
- iii Devanand Prithviraj Satyashewak
aged about 45 years, Occ. Labourer
- iv. Vishvanand s/o Prithviraj Satyashewak,
aged about 43 years, Occ. Labour (legal
heir of Prithviraj Satyashewak

All r/o. Ashok Nagar, Gudhiyari,
Raipur (Chattisgarh State)

1B Smt. Bevendra Beniram Satdeve
(daughter), aged about 50 years,
Occ. Household. R/o. Shri Nagar,
Near Buddha Vihar, Kali Mata Mandir,
Gondia, Tah. & Dist. Gondia.

1C Dharamdeep s/o Penter Satyashewak,
(son) Aged about 48 years, Occ. Labour,
R/o. Kumbharni Nagar, Behind Dragon
Palace, Kamptee, Tah. Kamptee, District-
Nagpur.

Shri N.M.Jibhkate, Advocate for the appellant.
Mr. R.K.Borkar, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 26/09/2022.

1] Heard Mr. Jibhkate, learned counsel for the appellant/
defendant and Mr. Borkar, learned counsel for L.Rs of
respondent/original plaintiff.

2] The original plaintiff had filed a suit for possession
being RCS No. 140/2005, on the basis of having acquired title to the
suit property. The learned Trial Court by the judgment dated
2.2.2009 (page 19) had dismissed the suit, based upon the evidence
of the original Plaintiff Lahanabai, according to which the defendant

was inducted as a gratuitous licensee in the premises in question, which according to the learned Trial Court stood controverted by the defendant in view of his evidence that he was in occupation of the property in question since last 40 years (pages 28 & 29). The learned Appellate Court by the impugned judgment dated 9.1.2013 (page 14) has allowed the appeal and granted a decree for possession.

3] The second appeal was admitted on 15.10.2013 on the following substantial questions of law:

(1) Whether the first appellate Court fell in error in recording a finding that the appellant was residing in the suit property as a permissive occupier and that he was not the tenant of Mukabai?

(2) Whether the finding recorded by the first appellate Court that the respondent is entitled to recover possession from the appellant is perverse, as being not based upon the evidence before the Court?

4] I have heard Mr. Jibhkate, learned counsel for the appellant as well as Mr. Borkar, learned counsel for Respondent and with their assistance, have perused the pleadings in the suit as well as the evidence led.

5] The plea that the appellant/defendant was a tenant of the original owner Mukabai has not been proved by him, in the teeth of the plea by the plaintiff that he was the permissible occupier being the brother of her husband. The factum of tenancy is one, which is eminently provable by documents, however, there is not a single document, either by way of a rent receipt or any entry in the municipal record, regarding the status of the appellant/defendant regarding the occupation of the premises in question. Though the learned Trial Court had held that the plaintiff was the owner of the property in question, it declined to grant a decree, only on the ground that the plaintiff in her cross examination claimed ignorance as to whether the defendant was paying any rent to Savitribai and after her to Hiralal. The ignorance in respect of such a situation cannot be deemed to be admission on part of the plaintiff regarding the status of the defendant as that of a tenant, which was being

pleaded by the defendant. Even the evidence of PW-2 is of no assistance to the defendant/appellant, for the reason that she makes a categorical statement that after her marriage she was not aware of the affairs in respect of the suit property. In fact, the defendant having claimed that he was the tenant and not the permissive user, which position could be evinced from documents, having failed to place them on record, the learned Appellate Court rightly rendered a finding against him.

6] That apart, though the defendant/appellant claimed that he was paying the rent to Hiralal, he did not examine Hiralal to substantiate this contention. Even in his evidence, the defendant does not claim to have paid any rent to the plaintiff. Rather on the contrary, the defendant had set up a plea that the suit property was bequeathed to him by one Beniram, his brother in law by a Will dated 24.3.2002, which plea he had failed to prove. In the cross examination, he categorically states that the plaintiff Lahanabai was not the owner of the property in question at all. This being the position, in my considered opinion, the overall position reflected from the pleadings as well as the evidence on record and any lack of

material placed by the defendant on record to indicate that he had ever paid any rent to Mukabai in the first place and thereafter to Hiralal, the substantial questions of law framed on 15.10.2013 are answered in the negative and the second appeal is dismissed. No costs.

JUDGE

Rvjalit