

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

**SECOND APPEAL NO.404 OF 2014
WITH CIVIL APPLICATION NO.741 OF 2015**

1. Yusuf s/o Sayya Saheb Sayyad
Age: 52 yrs, Occu: Service
2. Joharabai w/o Yusuf Sahib Sayyad
Age: 44 years, Occu: Household
Both R/o Panchwati Nagar, Latur

**... Appellants
[Orig. Defendants]**

Versus

1. Nijampasha s/o Mohammad Shaikh
Age: 40 yrs, Occu: Agri.
R/o Panchwati Nagar, Latur

**... Respondent
[Orig. Plaintiff]**

...

Mr. S. V. Gundre, Advocate for the Appellants
Mr. H. V. Tungar holding for Mr. C. R. Deshpande, Advocate for the
Respondent

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 01.08.2023

FINAL ORDER :

1. The appellants / original defendants assail the judgment and order passed by the District Judge-1, Latur, in Regular Civil Appeal No.199/2013, thereby confirming the judgment and decree dated 28/08/2013, passed by 8th Joint Civil Judge, Junior Division, Aurangabad, in Regular Civil Suit No.27/2008.

2. The respondent/plaintiff has instituted Regular Civil Suit No.27/2008 before the Trial Court seeking decree for mandatory injunction for delivery of suit property contending that because of his cordial relation with defendant, he permitted defendant to reside in two room. The defendant no.1 had instituted Regular Civil Suit No.236/2005 seeking perpetual injunction against the plaintiff. His suit is dismissed. Thereafter, the plaintiff issued a legal notice of revocation of license to the defendants dated 24/12/2007. Hence, the present suit is filed. The contention of the appellants / defendants is that they are the real owner of suit property. They purchased property in the name of plaintiff / respondent because he was facing litigation under the Motor Vehicles Act initiated by victims of accidents involving his vehicles, thereby seeking compensation. He would therefore submit that the suit filed by the plaintiff seeking mandatory injunction based on the title cannot be entertained.
3. Mr. Gundre, learned Advocate for the appellants submits that the suit in the present form would not be maintainable, particularly, when the possession of the defendants was admitted, the suit of eviction ought to have been filed. The Trial Court as well as Appellate Court have committed grave error of law while entertaining the suit instituted seeking decree for mandatory injunction.
4. Mr. Tungar, learned Advocate appearing for original plaintiff / respondent submits that the plea raised by the defendants regarding benami transaction cannot be entertained in view of the specific bar under Section 4 of the Benami Transaction

(Prohibition) Act, 1988 [hereinafter referred to as 'the Act' for short]. He would submit that an application under the provisions of Order VI Rule 16 R/W Order XIV Rule 5 of the Code of Civil Procedure, 1908 was filed by the plaintiff praying to struck-off the defence raised in written statement being inconsistent with the legal provisions. The said application was allowed vide order dated 04/11/2008 and pleadings in Paragraph Nos.(a) (c) and (d) of the written statement filed by the defendants were struck out. He would submit that the order dated 04/11/2008 attained the finality up to this Court. He would therefore submit that the arguments based on such defence cannot be permitted in the second appeal.

5. So far as the second contention of the appellants that the suit for mandatory injunction could not have been entertained. Mr.Tungar, learned Advocate relies upon the judgment of the Supreme Court in the matter **Sant Lal Jain Vs. Avtar Singh** reported in **AIR 1985 (SC) 857**. He specifically invites attention of this Court towards the observations in Paragraph No.6, which are based on the previous judgment of the Supreme Court in the matter of **Milka Singh Vs. Diana** reported in **AIR 1964 J and K 99**, which states as under:

“After the termination of the licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation, by way of a mandatory injunction under Section 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.”

He, therefore, submits that the suit for mandatory injunction on expiry of license period is maintainable and the

proceeding for eviction need not be initiated.

5. Having considered the submissions advanced by the learned Advocates appearing for the parties, it transpires that the very defence of the appellants / defendants that they are the owner of the property and the sale deed in the name of plaintiff is benami transaction, has been struck down by the order passed below Exhibit-18 by the Trial Court and the same has attained finality on confirmation by this Court. Therefore, the contention of the defendants that they are real owners of the suit property has been rightly rejected by both the Courts below.
6. The second contention of the appellants is that the suit for mandatory injunction is not maintainable and could not have entertained, is not sustainable in view of the law laid down by the Supreme Court in the matter of Sant Lal Jain (Supra). The Courts below have considered the factual and legal aspects in its proper perspective and recorded adequate reasons in favour of the plaintiff while granting decree. No other legal issue raised for consideration of this Court.
7. In that view of the matter, no substantial question of law arises for consideration in this appeal. Hence, the appeal is dismissed.
8. In view of dismissal of appeal, civil applications, if any, are also disposed of.

[S. G. CHAPALGAONKAR, J.]