

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 788 OF 2022
WITH
CIVIL APPLICATION NO. 16678 OF 2022
IN
SECOND APPEAL NO. 788 OF 2022

Hindustan Petroleum Corporation Ltd. ... Appellant
Versus
Mr. Nandkumar @ Laxman Sahadu Borude ... Respondent
...
Mr. Anand P. Bhandari – Advocate for appellant
....

CORAM : GAURI GODSE, J.
DATE : 28TH FEBRUARY, 2023

PER COURT :

1. This appeal is preferred by the defendant for challenging concurrent judgment and decree passed for handing over possession of an additional area occupied by the appellant as shown in measurement plan, which is placed on record.
2. The respondent/plaintiff filed Regular Civil Suit No. 76 of 2012 in the court of Civil Judge Senior Division, Shrigonda, for possession of suit property described as Gut No. 1498, ad-measuring 1541.75 square meters. It is the case of the respondent-plaintiff that an agreement for lease

dated 20th October, 2004 was executed in favour of the appellant/defendant for an area of 929.6 square meters for a period of 30 years for the purpose of carrying out business of retail outlet of a petrol pump. It is the case of the plaintiff that the defendant occupied an additional area over and above the area under lease agreement and hence, the plaintiff filed suit for possession of the entire area of Gut No. 1498. The learned Joint Civil Judge Senior Division, Shrigonda, by judgment and decree dated 27th November 2020, partly allowed the suit and directed the defendant to hand over possession of additional area as per the measurement map. The learned Trial Judge has, on the basis of the appreciation of evidence on record, recorded findings that the defendant was found in possession of an additional area of 505 square meters and hence passed the decree only with respect to the additional area. The plaintiff was not held entitled for possession of the entire area on the ground of termination of the tenancy as claimed by the plaintiff.

3. The trial Court also passed a decree for enquiry of mesne profits under Order 20 Rule 12 of CPC from January - 2004 till handing over of possession with respect to the additional area. The trial court relied upon the map at Exhibit - 150 for the purpose of holding that the defendant was found in possession of an additional area over and above the lease agreement.
4. Being aggrieved by the judgment and decree of the trial court, the plaintiff preferred Regular Civil Appeal No. 3 of 2021. It was the grievance of the plaintiff that the appeal was preferred by the plaintiff as the trial court had refused to grant the prayer with respect to possession of the entire area as claimed in the suit. In the said appeal, the defendant filed cross-objections challenging the decree of possession with respect to the additional area. The first appellate court framed points for determination with respect to the excess area being in possession of the defendant as well as the claim of the plaintiff with respect to entitlement for possession of the entire area. The first

appellate court has, on re-appreciation of the evidence on record, recorded a finding with respect to the appellant/defendant being found to be in possession of an area in excess of the area under the lease agreement. The appellate court has also referred to the lease document and agreed rent amount with respect to the area under lease document and hence, confirmed the finding of the trial court for directing enquiry for mesne profits for the purpose of additional area. Thus, the first appellate court has confirmed the decree passed by the trial court. Hence, the present second appeal is filed by the defendant.

5. The learned counsel for the appellant submitted that the defendant has very specifically pleaded that he was not in possession of any additional area. Thus, it was submitted that the defendant had come with a case that he was not in possession of any additional area over and above the area under the lease document. Hence, there was no reason for both the courts to pass a decree for holding enquiry for mesne profits. The learned counsel further

submitted that the first appellate court has referred to the rent amount as per the agreement and as also recorded a finding that there was no agreement between the parties with respect to the rent amount for the additional area. The learned counsel therefore submitted that when the first appellate court had come to a conclusion that there was no agreement with respect to the additional area for payment of rent, there was no question of passing a decree for holding enquiry for mesne profits. The learned counsel for the appellant also submitted that though the map is made part of the decree, the contents of the map are not appreciated by the first appellate court in its proper perspective. Hence, he submitted that the second appeal raises questions of law and needs to be admitted.

6. I have perused the record of the second appeal as well as the pleadings of the parties and evidence which is placed on record. The copy of map which is made part of the decree is also placed on record. Perusal of the map shows that the additional area alleged to have been occupied by

the defendant is specifically demarcated in the map. Both the courts have, in fact, referred to the evidence on record which is in support of the map. There is nothing shown to me that the contents of the map were disputed by the defendant in the oral evidence. The trial court in paragraph nos. 16 to 25 has in detail discussed the documents as well as oral evidence on the point of the defendant being in possession of the additional area over and above the area under the lease deed. The first appellate court has also re-examined the evidence on record and has come to a conclusion that the defendant is found to be in possession of the additional area of 505 square meters which is in addition to the area under lease agreement handed over to the defendant. The cross-examination of the witness of the defendant shows that there is a clear admission that the defendant's witness had agreed that the defendant was in possession of an additional area.

7. The submission on behalf of the appellant with respect to

the decree for directing enquiry for mesne profit has also no merit, as the perusal of both the judgments shows that the courts have come to a conclusion that the agreed rent with respect to the lease agreement was only for the purpose of the area under the lease agreement, which was handed over to the defendant. Once there was a finding of fact recorded that the defendant was found in possession of additional area than the area under the lease document, there is no reason as to why enquiry for mesne profit should not be ordered.

8. The submissions made on behalf of the defendant are on the basis of the factual aspects which are already considered by both the courts and there is concurrent findings recorded by both the courts. Once there is a concurrent finding recorded on appreciation of the evidence on record, re-assessment of the evidence is not permissible under Section 100 of CPC. I do not find that there is any substantial question of law involved in the second appeal. Hence, the second appeal is dismissed.

9. In view of dismissal of second appeal, pending civil application is dismissed as infructuous.

[GAURI GODSE]
JUDGE