

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

8 CRA NO.103 OF 2023

ABDUL KADIR SULEMAN (DIED) THR LRS JULEKHABEE
ABDUL KADIR SULEMAN AND ORS
VERSUS
HUNED NURUDDIN KADIYANI

...
Advocate for Applicants : Mr. S. V. Natu h/f Mr. Pandit Sushil P.
Advocate for Respondent : Mr. Jayant R. Shah.
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CORAM : S. G. MEHARE, J.
DATE : 29.11.2023

PER COURT :-

1. Heard the learned counsel for the applicants/tenants and the learned counsel for the respondent/landlord.
2. The landlord has filed a suit for eviction under the Maharashtra Rent Control Act, 1999 on the ground of default in payment of the rent and for bona fide need. The trial court decreed the suit. The First Appellate Court dismissed the appeal with costs by its judgment and decree dated 07.10.2022.
3. Learned counsel for the applicants raised a sole question that the open plot was the suit property. They had landlord-tenant relationship. It was rented to the tenant. A open plot is

not 'premises' as defined under Section 7(9) of the Maharashtra Rent Control Act, 1999. Therefore, the suit as framed and presented was not tenable under the Maharashtra Rent Control Act. He would submit that both Courts did not pay heed to such a prime legal issue. They have incorrectly considered that the issue of the level of the Court having jurisdiction and erroneously passed the decree of the eviction.

4. Learned counsel for the landlord would submit that no objection as such was raised before the trial court, the tenants have submitted to the jurisdiction of the civil court. Hence, such objection could not be raised first time before this Court. However, he did not deny that the land in question is an open plot rented to the tenant.

5. Perused the impugned judgments and decrees. The Courts have dealt with the issue of jurisdiction of the Courts that whether the suit is filed with the Court of Civil Judge Senior Division or Junior Division. However, nobody touched a root objection that the suit itself is barred under the Maharashtra Rent Control Act, as the suit property is not "premises" as defined under Section 7(9) of the Maharashtra Rent Control Act.

6. Learned counsel for the tenant would submit that the term “premises” has been interpreted in the case of *Smt. Savitribai Vishnupant Vaske Vs. Faruk Abdulrahim Patel and others ; 2010 (5) Mh.L.J. 357*. The same view has been taken in the case of *Pradeep Advertising Agency, Nagpur Vs. Sri Aurbindo Circle, Registered Society, Nagpur and others ; 2015 (2) Maharashtra Law Journal 167* and in the case of *M/s. Auto Hirers and another Vs. Commerce Centre Co-operative Society Ltd ; 2018 (3) Maharashtra Law Journal 942*.

7. The term “premises” as defined does not include the open plot. Since the open plot is not the premises, the suit of landlord for eviction under the Maharashtra Rent Control Act could not be entertained. Hence, the ratio laid down in the above cases squarely applicable to the case at hand.

8. Learned counsel for the landlord expressed an apprehension that the finding of this Court may come in the way of the landlord if he files a suit for eviction under the general law of the transfer of property. The law is clear and well settled that the landlord has right to seek eviction if available under the another law. Under the Maharashtra Rent Control Act, there are grounds for eviction. However, where the Maharashtra Rent Control Act is not applicable, such suits

are governed under the General Law i.e. Transfer of Property Act. In view of the legal position, the Court find no substance in the apprehension of the landlord that his further suit for eviction under the General Law would be barred.

9. The discussion made above, led this Court to pass the following order :

ORDER

- (i) Civil Revision Application is allowed.
- (ii) The impugned judgments and decrees passed by the learned Joint Civil Judge Junior Division, Shahada in Regular Civil Suit No.15 of 2005, dated 11.07.2006 and the learned Ad-hoc District Judge, Shahada in Regular Civil Appeal No.21 of 2006, dated 07.10.2022 stand quashed and set aside, as the suit is not tenable under the Maharashtra Rent Control Act.
- (iii) No order as to costs.
- (iv) The landlord is at liberty to seek the remedy available under the another law.

(S. G. MEHARE, J.)

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