

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.406 OF 2023

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RAMESH
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Pundalik Dinkar Jagtap (Deceased)
Through His Legal Heirs ... Appellants

V/s.

Prashant Ratnachandra Gandhi & Anr. ... Respondents

Mr. Nikhil Wadikar with Mr. Niranjan Kandade
with Mr. Malhar Pawar with Ms. Sejal Jain
i/by Mr. Nandu Pawar for the appellant.
Mr. Vishwanath Talkute for the respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 14, 2023

P.C.:

1. The appellants are original defendants in a suit for possession filed by the respondents claiming defendants to be tenant in the property. The suit property is described in paragraph No.1 by getting details of boundaries. According to the plaintiffs, initially suit property was owned by Virchand Shah. The plaintiffs purchased it from legal representatives of Virchand Shah in 1994. The defendants are tenant in the suit property. After purchase of suit property in the year 1994, plaintiffs communicated said fact of purchase to the defendants and called upon defendants to pay rent at Rs.250/- per month. The defendants paid rent to the plaintiffs till October 1999. According to the plaintiffs, thereafter defendants paid enhanced rent at Rs.800/-. It is pleaded that since the

plaintiffs are in need of suit property, they filed suit for possession.

2. The appellants filed written statement and contested the suit. According to the appellants, they were inducted as a tenant by the earlier owner Virchand Shah. Under the mistake of law, that plaintiffs are owner of the suit property they paid rent to the plaintiffs. However, subsequently they realized that the plaintiffs are not owner of the suit property and, therefore, they stopped paying rent to the plaintiffs. According to them, plaintiffs have no right to claim possession of suit property as the defendants was inducted as tenant by the earlier owner.

3. The Trial Court decreed the suit. The Appellate Court dismissed the appeal.

4. Learned advocate for the appellants submitted that the plaintiffs failed to prove ownership over the suit property by producing on record copy of sale deed. Since the suit is for possession, it was obligatory on the plaintiffs to prove their ownership over the suit property. According to them, the defendants are entitled to dispute title of the plaintiffs as bar under section 116 of the Indian Evidence Act, 1872 operates against the person who inducted tenant in the suit property. According to them, description of the suit property is improper.

5. On perusal of the impugned judgments delivered by the Courts below, it appears that the plaintiffs filed suit against the defendants in his capacity as landlord of the suit property. Undisputedly, provisions of the Maharashtra Rent Control Act, 1999 do not apply to suit premises. Therefore, rights of the parties

will be covered under the provisions of the Transfer of Property Act, 1882.

6. From the averments in the plaint and written statement, the fact of payment of rent by defendants to the plaintiffs from 1994 to 1999 and, thereafter, at enhanced rate is not in dispute. Once the relationship of landlord and tenant is established by payment of rent by the defendants to the assignee of original owners' right, the tenant is precluded from challenging derivative title of the landlord.

7. The Apex Court in the Case of **Apollo Zipper India Limited vs. W. Newman and Co. Ltd.** reported in (2018) 6 SCC 744 in paragraphs 41 and 42 held as under:

“41. In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. (See *Sheela v. Firm Prahlad Rai Prem Prakash* reported in (2002) 3 SCC 357, para 10 at SCC p.383 and also *Boorugu Mahadev & Sons v. Sirigiri Narasing Rao* reported in (2016) 3 SCC 343, para 18 at SCC p.349.)

42. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's

title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. (See *Bismillah Be v. Majeed Shah* (2017) 2 SCC 274, para 24.”

8. In view of aforesaid preposition of law laid down by the Apex Court, the defendant is precluded from disputing title of the plaintiff as landlord of the suit property. The Courts below have recorded finding of fact that the defendants have failed to prove payment of rent for period 1994 to 1999 and, thereafter, at enhanced rate till 2003 was under mistake of fact and law. The said findings are findings of fact which are based on material on record. Considering the material findings of fact recorded by the Courts below, it cannot be termed as perverse. Therefore, there is no substantial question of law involved.

9. The second appeal is dismissed. No costs.

(AMIT BORKAR, J.)