

Harish

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

SECOND APPEAL NO.854 OF 2022

Qadir Ahmed Shahu Khan

(Since Deceased Through His L.R's)

1. Altafkhan S/o Qadir Ahmed & Ors. ...Appellants

Versus

Shri. Goshala Panjarapol Institution & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 30604 OF 2022
IN
SECOND APPEAL NO.854 OF 2022**

Qadir Ahmed Shahu Khan

(Since Deceased Through His L.R's)

1. Altafkhan S/o Qadir Ahmed & Ors. ...Applicants

Versus

Shri. Goshala Panjarapol Institution & Ors. ...Respondents

**WITH
SECOND APPEAL NO. 855 OF 2022**

Hiralal Maujibhai Patel ...Appellant

Versus

Shri. Goshala Panjarapol Institution & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 30603 OF 2022
IN
SECOND APPEAL NO. 855 OF 2022**

Hiralal Maujibhai Patel ...Applicant

Versus

Shri. Goshala Panjarapol Institution & Ors. ...Respondents

Mr. R. S. Alange i/b M. N. Sandhyanshiv, for the
Appellants/Applicants.

Mr. Madhav S. Surana, for the Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 10th April, 2023

P.C.:

1. Heard Mr. Alange, learned counsel appearing for the Appellant and Mr. Surana, learned counsel appearing for the Respondents.

2. Mr. Alange submitted that, following substantial questions of law are involved in the present Second Appeal :-

- "i] Whether the suit was maintainable as the suit property in question was not open space and therefore provisions of the Maharashtra Rent Control Act are applicable?
- ii] Whether notice of 6 months was given by the Plaintiffs to the Defendants?
- iii] Whether the provisions of the Maharashtra Rent Control Act have not been properly considered even though the relationship of landlord and tenant has been admitted by the parties?
- Iv] Whether both the courts below ought to have considered the notice given by the Plaintiff in which it is specifically stated that, there was a tin shed in suit premises?

3. Both the learned counsel states that, the controversy in both the Second appeals is identical. The factual position in Second Appeal No. 855 of 2022 is discussed hereinbelow.

4. Respondent No. 1 is a trust and other Respondents are the members of the trust. The Respondents filed Regular Civil Suit No. 213 of 2008 seeking eviction by raising contention that, the suit property is open plot and the same has been leased to the Appellant i.e. Defendant for the purpose of sawmill and therefore, the lease is for the manufacturing purpose.

5. Both the learned Trial Court as well as the learned First Appellate Court have concurrently held that, the Plaintiffs have proved the lease deed dated 28th January, 1974 which is at Exhibit-31.

6. It is the contention of the learned counsel appearing for the Appellant that, the Lease Deed requires compulsory registration and, therefore, he has relied on Section 17(1)(d) of the Registration Act 1908. The said provision provided that, lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent requires compulsory registration. However, perusal of Exhibit-31 shows that, the same was for the period of 11 months and, therefore, the same does not require compulsory registration.

7. Both the Courts after considering the evidence on record and after considering cross-examination of the witnesses examined on behalf of Plaintiff as well as Defendant, have come to

the conclusion that, the said Lease Deed dated 28th January, 1974 is proved. The said lease deed specifically shows that, open plot of land was leased. The learned Trial Court as well as the learned First Appellate court on the basis of Judgment of this Court in the matter of **Savitribai Vishnupati Vaske & Ors. Vs. Faruk Abdul Rahim Patel & Ors.**¹ has held that, the provision of the Maharashtra Rent Control Act, 1999 are not applicable to the open plot. Therefore, both the Courts have held that, the applicable provisions are the provisions of the Transfer of Property Act.

8. It is admitted position that, the Suit notice is of 8th April, 2005 and the Suit was filed on 7th October, 2008. It is the contention of the learned counsel appearing for the Appellant that, as the suit property was let-out for manufacturing purpose, six months notice is required and the Suit notice is of only 15 days. It is significant to note that, the Suit was filed on 7th October, 2008 and the Suit notice is dated 8th April, 2005. Section 106 of the Transfer of Property Act, 1882 which was substituted by amendment which has come into force w.e.f. 1st January, 2003, provides that, a notice under sub-section 1 of section 106 shall not deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section,

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where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. Sub-section 1 of section 106 contemplates Six months notice if, the lease of immovable property is for the manufacturing purpose. In this case, the Suit notice is dated 8th April, 2005. The Six months period expires on or about 8th October, 2005 and the Suit was filed on 7th October, 2008. Therefore, the Suit notice is not illegal as per amended section 106.

9. Therefore, there is no substance in the substantial questions of law raised by the Appellant. For the above reasons, Second Appeal No. 854 of 2022 and Second Appeal No. 855 of 2022 are dismissed.

10. In view of dismissal of both Second Appeals, nothing survives in the Interim Applications filed therein and the same are also dismissed.

11. Mr. Alange, learned counsel appearing for the Appellants at this stage seeks stay of the eviction decree. The eviction decree be not executed up to 31st August, 2023 on the condition that, the Appellant files undertaking in this Court stating that, the Appellants are in possession of the suit property, they will not create any third party interest and in case the Appellants fail to obtain any stay from the higher Court on or before 31st August,

2023 then, the Appellants will hand over the possession of the suit property to the Respondents on or before 31st August, 2023 and they will pay the usual rent. The Appellants as well as the adult family members of the family of the Appellants to file undertaking to this effect on or before 3rd May, 2023.

12. The Second Appeals are dismissed subject to above. No costs.

(MADHAV J. JAMDAR, J.)