



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 720 of 2018

Shri Shankarrao Chindhuji Bambal

Versus

Gulabrao Laxmanrao Pohare

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.M.Nafde, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 27th SEPTEMBER, 2023.

Heard.

2. The judgment and decree dated 26th August, 2013 passed by the learned 1st Ad-hoc District Judge and Additional District Judge-3, Amravati in Regular Civil Appeal No. 132 of 2011, allowing the appeal and decreeing the suit for eviction, is under challenge in this writ petition.

3. The respondent who is claiming to be the owner of the suit property filed a suit for eviction of the petitioner on the ground that the suit house was given to the petitioner on rent at the rate of Rs.150/- per month and since then the petitioner failed to pay rent for last four years and therefore, he was asked to vacate the house and as he failed to vacate the house, the suit was filed.

4. The petitioner/defendant contested the suit on the ground that by encroaching over the Government Land, he constructed the suit house and therefore there is no relation of landlord and tenant between the plaintiff and the defendant.

5. The learned trial Court vide judgment and decree dated 2nd May, 2011 dismissed the suit.

6. Thereupon, the respondent carried the said judgment and decree in appeal before the 1st Ad-hoc District Judge and District Judge-3, Amravati vide appeal No. 132 of 2011. The learned Lower Appellate Court reversed the judgment and decree of the trial Court and thereby the passed the decree of eviction.

7. I have heard learned counsel for the petitioner. None for the respondent, though served long back.

8. Shri Nafde, learned counsel for the petitioner makes a statement that in the year 2015 the possession was taken in the execution proceeding. However, if he succeeds in the matter, he can claim the possession back for the reason that he himself is the owner of the suit house and not the tenant of the suit house.

9. It is submitted that the learned lower Appellate Court only on the basis of the oral evidence of

the plaintiff, has held that the petitioner is the tenant of the plaintiff, whereas no documentary evidence showing that at any point of time any rent was paid by the petitioner, was produced by the plaintiff.

10. It is submitted that if it is the case of the petitioner that five years prior to the filing of the suit, the suit house was given to the petitioner on rent and further if it is the case of the petitioner that prior to four years of filing of the suit, the petitioner stopped paying the rent, no evidence has been brought on record to point out that for 1st year of tenancy the rent was paid. It is therefore submitted that the reversal of the judgment and decree of the trial Court by the lower Appellate Court is erroneous and the findings recorded by the learned lower Appellate Court that the petitioner is the tenant of the respondent is perverse and without any evidence.

11. In the light of submissions made by the learned counsel for the petitioner, I have perused the record and the impugned judgment and decree.

12. The learned Lower Appellate Court has given much stressed upon the evidence as regards the ownership of the suit house. Whereas, while holding that the petitioner is the tenant, the only observations

are made in paragraph 13 of the judgment which reads thus:

“13. Thus, admission part in the cross-examination of the plaintiff, PW-1, that he had given suit house on tenancy to the defendant for the education of the children of the defendant is sufficient to prove the relationship of plaintiff and defendant as tenant and landlord. As per Section 116 of the Indian Evidence Act, 1872 now the defendant is not permitted to deny title of the plaintiff to the suit house. It is binding to the defendant and excludes him from raising dispute in respect of title of the plaintiff.”

13. It is further evident from the oral evidence of the plaintiff that he has admitted in the cross-examination that the suit house is constructed on the Government Land and since the beginning the petitioner is residing in the said house.

14. At the same time, the defendant has brought on record the oral evidence that he had constructed the suit house on the Government land by encroaching upon the same.

15. The defendant has further denied the tenancy and claimed ownership of the suit house.

16. None of the parties have produced any documentary evidence in support of their respective case in relation to tenancy. Thus, there are words against the words.

17. In absence of any evidence more particularly showing that any rent was paid at any time by the petitioner to the plaintiff or any other document showing that any tenancy was created, the observations made by the learned Appellate Court in paragraph 13 of the impugned judgment cannot be said to be based on any evidence and thus, the said findings is perverse and without evidence.

18. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned lower Appellate Court for deciding the same afresh. Accordingly, I pass the following order.

- i. The writ petition is partly allowed.
- ii. The judgment and decree dated 26th August, 2013 passed by the learned 1st Ad-hoc District Judge and Additional District Judge-3, Amravati in Regular Civil Appeal No. 132 of 2011 is hereby quashed and set aside;
- iii. The appeal is restored back to its original number.
- iv. The learned lower Appellate Court is directed to decide the same afresh after giving sufficient opportunity to both the parties.

[ANIL S. KILOR, J.]