

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

SECOND APPEAL NO.265 OF 2019

- 1) Jitendra s/o Sawalsingh Vadao
Aged about 57 years, Occ: business,
R/o Gujarwadi, Imambada Road, Cotton
Market, Nagpur.
- 2) Vikramsingh s/o Pratapsingh Yadav,
aged about 60 years, Occu: Business,
R/o New cotton Market Road, Opp.
Kisanji Milk Diary, Ghat Road, Nagpur.

.... Appellant(s)
(Ori. Defendants)

// VERSUS //

Sou. Ratna w/o Tukaram Urade,
Aged about 67 years, Occu: Household,
R/o Dalal Chowk, Dahi Bazar, Itwari,
Nagpur-2.

... Respondent(s)
(Ori. Plaintiff)

Shri S. V. Deshmukh, Advocate for the appellants

Shri R.L. Khapre, Senior Advocate a/b Shri S.U. Kothekar, Advocate for the respondent

**CORAM : ANIL S. KILOR, J.
DATED : 09th March 2023**

ORAL JUDGMENT :

1. Heard.
2. Admit.

3. In this appeal, a challenge is raised to the judgment and decree dated 30.07.2016 passed by 5th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No.958 of 2013, decreeing the suit filed by the plaintiff for ejectment and possession, and confirming the said judgment and decree by the *Ad hoc* District Judge-1, Nagpur in Regular Civil Appeal(RCA) No.254 of 2017.

4. The brief facts of the present case are as under: (parties are referred to as per their status before the trial Court)

The case of the plaintiff/respondent is that she purchased suit property by registered sale deed dated 27.12.2012 from M/s R.C. Printers and packaging Pvt. Ltd. Company. The defendants/appellants are in possession of 2400/- sq.ft. of land and doing business of selling cattles. The defendants are occupying said portion of land as tenant of previous owners. The plaintiff had informed the defendants about the purchase of suit property by her and that they became tenant of the plaintiff. According to the plaintiff, defendants did not enter into fresh agreement of tenancy with plaintiff. They neither informed the plaintiff the quantum of rent, nor paid it. From the reliable source, the plaintiff

came to know that the defendants were paying Rs.1000/- p.m. towards rent to the previous owners.

5. It is further the case of the plaintiff that the plot in possession of plaintiff is insufficient to carry on business of iron and steel, by her husband and children. The plaintiff therefore, by issuing notice dated 25.10.2013 under Section 106 of the Transfer of Property Act, 1882 (for short "the TP Act") terminated the tenancy of the defendants and called upon them to vacate the suit property. In spite of service of notice, the defendants neither replied nor complied with the requisition made in it. Hence, the plaintiff constrained to file suit against the defendants for eviction and recovery of possession.

6. The defendant Nos.1 and 2 filed their written statement and resisted the claim of the plaintiff.

7. The learned trial Court, thereupon, recorded oral evidence and after hearing both the parties, decreed the suit in favour the plaintiff. The judgment of the trial Court was carried by the defendants before *Ad hoc* District Judge-1, Nagpur in RCA No.254 of 2017, which came to be dismissed. Hence, this Appeal.

8. The learned counsel for the appellants/defendants, submits that the suit itself was not maintainable as the plaintiff sought ejectment of the tenant from the suit premises and therefore, under the provisions of the Maharashtra Rent Control Act, 1999 (for short “the Rent Act”), jurisdiction lies with the Small Causes Court.

9. It is submitted that though an open plot does not fall within a definition of ‘premises’, however, it has come on record that temporary structure was constructed by the defendants with a permission of the landlord and therefore, the suit premises comes within the definition of ‘premises’ under the Rent Act. It is submitted that without considering the said fact, the learned trial Court despite no jurisdiction entertained and decreed the suit and the learned First Appellate Court maintained the same. For this purpose, he has relied upon the judgment of the Co-ordinate Bench of this Court in the case of ***Govindram Bros. Pvt. Ltd. and others Vs. Alexander Benedict Joseph Pereira***¹.

10. On the other hand, the learned Senior Advocate for the plaintiff argues that by issuing notice under Section 106 of the TP Act, the tenancy was terminated and as such, on the date of the filing of the suit, the defendants were not tenant but trespassers. For this purpose, he has

1 1995 (1) Mh.L.J. 115

placed reliance upon the following judgments of the Hon'ble Supreme Court of India in the cases of *Abdullah Bin Ali and Others Vs. Gallappa and others*², *Smt. Sulochana Vs. Rajendra Singh*³, *V. Dhanapal Chettiar Vs. Yesodai Ammal*⁴ and the judgment of the Division Bench of this Court in the case of *J.C. and Sons & anr. Vs. Ghafrana Banobi Ahmed Ali*⁵.

11. The learned Senior Advocate further argues that the defendants have not admitted the plaintiff as owner. On the contrary, denied the title of the plaintiff and therefore, the suit before the Civil Court is maintainable. For this purpose, he has placed reliance upon the judgments of the Hon'ble Supreme Court of India in the cases of *Majati Subbarao Vs. P.V.K. Krishna Rao (deceased) by Lrs.*⁶ and the judgment of the Division Bench of this Court in the case of *Ratanlal Manikchand Shah Vs. Chanbasappa Sanganasappa Chincholi and others*⁷.

12. In reply, the learned counsel for the defendants submits that in the judgment of the Hon'ble Supreme Court of India, in the case of *Mahadev P. Kambekar Vs. Shree Krishna Woolen Mills (P) LTD.*⁸, has

2 AIR 1985 Supreme Court 577

3 AIR 2008 Supreme Court 2611

4 AIR 1979 Supreme Court 1745

5 2007 (4) Mh.L.J. 705

6 AIR 1989 Supreme Court 2187

7 AIR 1978 Bombay 216

8 (2020) 14 Supreme Court Cases 505

held that, even in the case where the tenancy is determined by issuing notice under Section 106 of the TP Act, the suit will lie before the Small Causes Court.

13. This Court, vide order dated 23.08.2019 framed the following substantial questions of law:

“(a) Whether the suit property is premises within the meaning of Section 7(9) of the Maharashtra Rent Control Act as would protect the respondent-tenant from eviction ?

“(b) Even if it is held that the respondent is not protected tenant whether the suit filed before the ordinary civil court was maintainable.”

14. In the light of the rival submissions, I have perused the record and the impugned judgments and the decrees.

15. Considering the substantial questions of law framed, it can be seen that the whole controversy revolves around the question whether the suit land falls within the definition of word ‘premises’ under the Rent Act. Thus, it is appropriate to refer to the definition of word premises under Section 7(9) of the Rent Act.

“(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including,-

(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house;”

16. Admittedly, it is the case of the plaintiff that the land involved in the present matter is an open land and even it is the case of the defendants that on the said open land with the permission of the original owner, subsequently they constructed temporary structure.

17. From the definition of the word ‘premises’, it is clear that it does not include open land and it applies to building and structure and parts thereof used as separate premises for residence, education, business, stock or storage. The Act does not apply to the land alone is let or given on lease.

18. Thus, the open land involved in the present case as well as the temporary structure subsequently constructed will not fall within the definition of word 'premises' and therefore, I do not find any substance in the submission of the learned counsel for the defendants that the suit for eviction ought to have filed by the plaintiff before the Small Clauses Court, as it is a dispute between the landlord and the tenant.

19. The Co-ordinate Bench of this Court in the case of ***Govindram Bros. Pvt. Ltd. and others*** (supra), has laid down that in ascertaining whether the land demised is used for agricultural purposes, the crucial date is date on which the right conferred by the Act is sought to be exercised. In the said matter, on the date of lease, it was an agricultural land and before filing suit it became premises subsequently when the petitioners raised construction on the property after obtaining non-agricultural permission. Thus, it is clear that in the said matter, there was order of Collector for conversion of agricultural land to non-agricultural, prior to institution of the suit and therefore, the Court has held that the agricultural land became premises on the date of filing of the suit.

20. In the present case, there is no dispute that the open land was given on rent to the defendants on which they constructed temporary structure. The open land as well as temporary structure both do not fall within the definition of word 'premises'. Moreover, no permission as regards the construction granted by the competent authority, is brought on record by the defendants to show that the open land became premises because of such construction.

21. Furthermore, it is not the case of the defendants that they used to pay rent of the land as well as the alleged structure on the said land. Thus, it is clear that only open land was let to the defendants on rent and since it does not fall within the definition of word 'premises' under Section 7(9) of the Rent Act, filing of civil suit is justifiable in this case.

22. In the case of ***Ratanlal Manikchand Shah*** (supra), the Division Bench of this Court has held thus:

“38. ...It is thus very clear, upon the observations of the Supreme Court, that in a situation where a landlord seeks recovery of possession of any premises, the relationship of landlord and tenant is a sine qua non for the attractability of the provisions of S. 28 of the Act. If such a condition is not fulfilled, Section 28 is out of the way and it is open to the owner of the property to recover

possession of the premises de hors the provisions of the Bombay Rent Act.

39. On the facts of this case, it will have to be inferred that as a result of the disclaimer, which disclaimer as found by us was much prior to the suit, the tenancy, if any, of defendants 3 and 4 came to an end. At' the time of the suit or even prior thereto there did not exist any relationship of landlord and tenant between the plaintiff and defendants 3 and 4, Defendants 3 and 4 in their written statement categorically took up the position that there never existed any relationship of landlord and tenant between them and the plaintiff. Defendants 3 and 4, on the contrary, claimed the tenancy from defendants 1 and 2, who, having regard to the findings made by us, have been proved to be trespassers on the suit premises. In these circumstances, it will have to be held that the defendants were not entitled to invoke the provisions of the Bombay Rent Act and that the bar of the jurisdiction of the Civil Court postulated by S. 28 of the Bombay Rent Act did not and does not apply to the facts of the case.”

23. The Hon’ble Supreme Court of India, in the case of ***Abdullah Bin Ali*** (supra), has held thus:

“5. There is no denying the fact that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a

suit against the trespasser would lie only in the civil court and not in the revenue court. The High Court, however, took the view that the plaintiffs-appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant.

6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that the defendant No. 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.”

24. In the present matter, it is the case of the defendants that they do not recognize the plaintiff as landlord and they used to send money orders towards rent to the vendor of the plaintiff. Thus, from the conduct of the defendants, since prior to filing of the suit, they have denied the ownership of the plaintiff and thereby denied relationship as landlord and tenant.

25. In the circumstances, considering the observations herein above referred and as recorded by the Hon’ble Supreme Court of India, filing

of suit for eviction in the Civil Court, is justifiable in the peculiar facts and circumstances of this case.

26. The Hon'ble Supreme Court of India, in the case of ***V. Dhanapal Chettiar*** (supra), has held thus:

“6. ... Without adverting to the effect and the details of waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non-payment of rent etc. as provided for in sections 112 to 114A of the Transfer of Property Act, suffice it to say that under the said Act no ground of eviction of a tenant has to be made out once a contractual tenancy is put to an end by service of a valid notice under S. 106 of the Transfer of Property Act. Until and unless the lease is determined, the lessee is entitled to continue in possession. Once it is determined it becomes open to the lessor to enforce his right of recovery of possession of the property against him. In such a situation it was plain and clear that if the lease of the immovable property did not stand determined under any of the Clauses (a) to (g) of Section 111, a notice to determine it under S. 106 was necessary. But when under the various State Rent Acts, either in one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his tenant

intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving a valid notice under section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion, it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law.”

27. The Hon'ble Supreme Court of India, in the case of **Majati Subbarao** (supra), has held thus:

“5. It was argued by learned Counsel for the appellant that even accepting that there was a denial of title by the appellant and the result would be only that the respondent-landlord became entitled to forfeit the lease and in order to be a ground for eviction in a suit that forfeiture would have to precede the suit or petition for eviction. It was submitted by him that it was not open to a landlord to take advantage of a denial of title by the tenant in the very proceedings for eviction in the course of which the denial was made. The denial must be anterior to the eviction proceedings. In support of this argument learned Counsel placed reliance on the decision in Maharaja of Jeypore v. Rukmani Pattamahdevi 46 Ind App 109 : AIR 1919 PC 1. In our view, this argument also does not stand scrutiny. In V. Dhanapal Chettiar Vs. Yesodai Ammal (1980) ISCR 334: (AIR 1979 SC 1745) a Constitution Bench of this Court comprising seven-learned Judges held that in the matter of determination of tenancy the State Rent Acts do not permit a landlord to snap his relationship with the tenant merely by serving on him a notice to quit as is the position under the Transfer of Property Act. The landlord can recover possession of the property only on one or more of the grounds enacted in the relevant section of the Rent Acts. Even after the termination of the contractual tenancy the landlord under the definitions of landlord and tenant contained in the, Rent Acts remains a landlord and a tenant remains a tenant because of the express provision made in the enactments that a tenant means 'a person continuing in possession after the

termination of the tenancy in his favour'. Yet another important feature of the Rent Acts is that either by way of a non obstante clause or by necessary implication these enactments have done away: with the law contained in Section 108 of the Transfer of Property Act dealing with rights and liabilities of the lessor and the lessee. The difference between the position obtaining under the Transfer of Property Act and the Rent Acts in the matter of determination of a lease is that under the former Act in order to recover possession of the leased premises determination of the lease is necessary because during the continuance of the lease the landlord cannot recover possession of the premises while under the Rent Acts the landlord becomes entitled to recover possession only on the fulfilment of the conditions laid down in the relevant sections. He cannot recover possession merely by determining the tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. In the case before us, we find that the denial of landlord's title by the tenant has been expressly made a ground for eviction u/s 10(2)(vi) of the A.P. Rent Act which we have already set out earlier. In view of this, the entire basis for the argument that the denial of title must be anterior to the proceedings for eviction under the A. P. Rent Act is knocked out. In our opinion, the argument of learned Counsel for the appellant must, therefore, be rejected. We find, on the other hand, that a number of High Courts have taken the view that even a denial of the landlord's title by a tenant in a written statement in an eviction petition under the Rent Act concerned furnishes a ground for eviction and can be relied upon in the very proceedings in which a written statement containing the denial has been filed (See : Sada Ram Vs. Gajjan Shiama, AIR 1970 Punj & Har 511; Shiv Parshad Vs. Smt. Shila Rani, Air 1974 Him

Pra 22 and Machavaram Venkata Narayana Rao v. Sarvepalli Narayana Rao Sarada, (1978) 1 Ren CJ 368 : (AIR 1978 NOC 160) (Andh Pra). As observed by the Punjab and Haryana High Court to insist that a denial of title in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of the tenant on the ground of forfeiture entailed by the tenant's denial of his character as a tenant in the written statement."

28. Thus, it is clear that the determination of tenancy by the landlord by issuing notice under Section 106 of the TP Act, does not permit to the landlord to snap his relationship with the tenant.

29. Hence, I do not find any substance in the submission of the learned counsel for the plaintiff that once the notice under Section 106 of the TP Act is issued, determining the tenancy, a remedy for eviction lies with the Civil Court and not with the Small Clauses Court. Accordingly, the said contention of the plaintiff is rejected. Accordingly, I have answered the substantial questions of law in the above terms. As there is no merit in the present appeal, the second appeal is **dismissed**.

30. At this stage, the learned counsel for the defendants/appellants prays for continuation of interim relief granted by this Court vide order dated 28.08.2019, for six weeks.

31. The learned counsel for the plaintiff/respondent strongly opposes the said request.

32. Considering the fact that the interim relief granted in favour of the defendants is in operation since 28.08.2019, I am of the opinion that no prejudice would be caused to the plaintiff, if it will continue for another six weeks. Accordingly, the interim relief granted by this Court vide order dated 28.08.2019, shall continue for six weeks from today and thereafter, it will stand vacated automatically.

[ANIL S. KILOR, J.]