

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

Writ Petition (WP) No. 6082 of 2018

Bhagirati Wd/o Devidas Lende

Versus

Shaikh Mehboob S/o Shaikh Aazam

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

Court's or Judge's Order

Smt. Smita P. Deshpande, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 20th FEBRUARY, 2023.

Heard.

2. The suit filed by the tenant for declaration and permanent injunction came to be decreed by the Small Causes Court and it has been upheld by the First Appellate Court vide impugned judgment and decree dated 8th January, 2016, which is under challenge in the present writ petition.

3. The only ground raised by the learned counsel for the petitioner/landlord is that only on the basis of money order receipts and electricity bill both the Courts below have held that the plaintiff is tenant, however, as per the landlord's case, the plaintiff is the trespasser. It is therefore submitted that the both the Courts have committed perversity.

4. None for the respondent, though served.

5. In this case, the respondent who is claiming to be a tenant of the petitioner filed a suit for declaration and permanent injunction. It is the case of the plaintiff that he is having two rooms in his possession and paying rent of Rs.300/- per month including taxes. It is further case of the plaintiff that though repeated demand was made to the landlord, he did not issue any receipt on payment of rent. It is submitted that the defendant/landlord was indulged in lodging the false complaint to the police against the plaintiff and therefore a suit was filed for declaration and permanent injunction which was decreed vide judgment and decree dated 23rd September, 2014, passed by the Additional Judge, Small Causes Court, Nagpur and thereby defendant/petitioner was restrained from disturbing the plaintiff's possession over the suit property without following due process of law.

6. The petitioner feeling aggrieved by the said judgment and decree, carried the appeal vide Regular Civil Appeal No. 437 of 2014, which came to be rejected.

7. From the perusal of the record and impugned judgment and decree, it is evident that though it is the case of the petitioner that the

respondent is a trespasser and not the tenant of the petitioner, however, the petitioner failed to lead any evidence to that effect and produced any evidence to establish that the status of the respondent is not of a tenant, but of a trespasser. In absence of any evidence led by the petitioner or as the petitioner failed to cross-examine the plaintiff, both the Courts have concurrently held that the plaintiff is a tenant and unless the due process of law is followed, he cannot be evicted. Accordingly, the suit was decreed.

8. In absence of any perversity pointed out by the learned counsel for the petitioner, I do not find any merit in the present writ petition. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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