

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

WRIT PETITION (WP) NO. 5687/2018

1. Sharad s/o Shriram Ghurai,
Age: 55 years, Occ: Business,
 2. Arvind S/o Shriram Ghurai,
Age: 50 years, Occ: Business,
Both Nos. 1 & 2 R/o Azad Ward,
Bhandara. 441094.
 3. Nilesh s/o Shriram Ghurai,
Age: 48 years, Occ: Nil, R/o Govind
Nagar, Narsala Road, Jai Maa
Ganga Society, Nagpur.
 4. Smt. Maltibai wd/o Shriram Ghurai
Age: 80 years, Occ: Nil, R/o Tilak
Ward, Bhandara, Dist. Bhandara 441904.
 5. Meena w/o Pralhad Bisne,
Age: 64 years, Occ: Household,
r/o Nehru Ward, Bhandara 441904
 6. Shobha w/o Sheshrao Bele,
Age: 62 years, Occ: Household work,
R/o Vitthalwadi, Hudkeshwar,
Nagpur.
 7. Rekha w/o Tarachand Mahajan,
Age: 50 years, Occ: Household,
R/o Premnagar, Nagpur.
 8. Rita w/o Sunil Kolhe,
Age: 45 years, Occ: Household,
R/o Bhagatsingh Ward, Ramtek,
Tah. Ramtek, Distt. Nagpur.
- PETITIONER(S)

// VERSUS //

1. Prakash s/o Keshavrao Donekar,
Age 45 years, Occ: Nil,
2. Suresh s/o Keshavrao Donekar,
Age: 40 years, Occ: Nil,
3. Pramod s/o Keshavrao Donekar,
Age 35 years, Occ: Nil,

All Nos. 1 to 3 R/o Shivaji Ward,
Bhandara, Tah. & Dist. Bhandara

.... RESPONDENT(S)

Mr.R.A. Gupte, Advocate for the petitioners
Mr. S.S. Ghate, Advocate for respondent nos. 1 to 3

CORAM : A.S. KILOR, J.

DATED : 06/06/2023

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. This writ petition takes exception to the judgment and decree dated 12.04.2018 passed by the learned District Judge -2, Bhandara in Regular Civil Appeal No. 114/2012 allowing the appeal and thereby, setting aside the judgment and decree dated 06.03.2012 passed by the learned 4th Joint Civil Judge Junior Division, Bhandara in Regular Civil Suit No. 45/2007 for arrears of rent, eviction and possession of the suit premises.

3. The suit premises is room bearing Premises No. 12/4 (Old Premises No. 11/4) situated at Bhandara admeasuring 07.14 square feet. The suit premises was owned by Late Sitaram Paigwar and Narayan Paigwar who were the brothers and let out the said premises to the father of the petitioners, i.e. Shriram. After the death of Shriram tenancy was continued. Deceased Narayan Paigwar has allotted the some portion of his share to his daughter Gauridevi Ramkumar Kasar. On 28.01.1994, she sold the said portion to the plaintiffs/respondents by registered Sale Deed. The said Sale Deed was challenged by the LR's of Late Sitaram Paigwar in Regular Civil Suit No. 170/2000 which came to be dismissed by judgment and decree dated 30.06.2005.

4. It is the case of the plaintiffs that, the defendants were well aware of the execution of the aforesaid Sale Deed. Despite the same, they did not pay rent for the period w.e.f. 01.03.2004 to 28.03.2006. The plaintiffs further claimed the suit premises for their bona fide use and occupation. Accordingly, legal notice was issued on 25.01.2006 and demanded the possession of the suit premises.

5. The plaintiffs terminated the tenancy of the defendants w.e.f. 28.02.2006 and filed a suit for arrears of the rent, eviction and possession vide Regular Civil Suit No. 45/2007, which came to be dismissed vide

judgment and decree dated 06.03.2012 passed by 4th Joint Civil Junior Division, Bhandara.

6. The respondents carried an appeal before the District Judge, Bhandara vide Regular Civil Appeal No. 114/2012 which came to be allowed vide judgment and decree dated 12.04.2018. Hence, this writ petition.

7. Heard the learned Counsel for the respective parties.

8. Mr. Gupte, learned Counsel for the petitioners submits that the respondents are not owners of the suit premises and they failed to file original copy of the Sale Deed on record to prove their ownership. It is further submitted that the plaintiffs are never demanded the rent from the defendants and, therefore, it cannot be said that defendants are in arrears of the rent.

9. It is further pointed out that the plaintiffs are never informed about transfer of title in their favour by the original owner. He, therefore, submitted that the Appellate Court has committed error in holding the plaintiffs as owner and further that the defendants are in arrears of rent. He accordingly prays for quashing and setting aside the impugned judgment and decree.

10. The learned Counsel for the respondents pointed out that the learned Appellate Court has considered in detail the oral as well as documentary evidence and after appreciating the provisions of law and also well settled law in this regard, allowed the appeal. It is submitted that the learned First Appellate Court has not committed perversity or legal infirmity in allowing the appeal and accordingly, he prays for dismissal of the present writ petition.

11. In the light of the rival contentions, I have perused the record and impugned judgment and decree.

12. It has come on record that the suit premises was earlier owned by Narayan and it was given to his daughter Gauridevi Ramkumar Kasar, who sold it to the plaintiffs vide registered Sale Deed dated 28.01.1994.

13. It has further come on record that the certified copy of the Sale Deed was placed on record (Exh. 44) alongwith judgment passed by the Civil Judge Junior Division in Regular Civil Suit No. 170/2000 wherein the title of the plaintiffs has duly been proved as the suit was between landlord of the defendant Sitaram and Gauridevi, vendor of the plaintiffs.

14. The defendants are not disputing this position.

15. The learned First Appellate Court after considering the definition of the landlord contained under Section 7(3) of the Maharashtra Rent Control Act, 1999 and the oral as well as documentary evidence produced by the plaintiffs to establish their ownership, has held that the plaintiffs are the owners of the suit premises. Thus, for the above referred reasons, the contentions of the learned Counsel for the petitioners cannot be accepted that, the plaintiffs have not proved their ownership.

16. In the circumstances, I do not find any error committed by the learned First Appellate Court in recording the findings in favour of the plaintiffs that, they are owners of the suit premises.

17. As far as the arrears of the rent is concerned, the petitioners have not come with a case that they were regularly paying the rent to the original owner Narayan as they had no knowledge about the transfer of title in favour of the plaintiffs. Though, the pleadings are that they have regularly paid the rent, the petitioners failed to prove the same by producing cogent evidence.

18. Thus, in absence of any evidence produced by the petitioners that, they regularly paid the rent and they were not in arrears of rent, the findings recorded by the Court below on this point needs to be confirmed as it does not require any interference.

19. In the circumstances, as the petition fails on both the points argued by the learned Counsel for the petitioners, I do not find any merit in the present writ petition. Accordingly, it is dismissed with on order as to costs.

(JUDGE)