



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

WRIT PETITION NO. 6660 OF 2022

(MANIK KANHUJI DAWALE (DEAD) THR. LRS...VS.. RAJESH MURLIDHAR NINGURKAR & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.A.Naik Adv. a/w Shri A.S.Manohar, Advocate for Petitioner.
Shri H.V.Thakur, Advocate for Respondent Nos.1 and 2.

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 19, 2023.

1. Heard.
2. The judgment and order dated 14/09/2022 passed by the Principal District Judge, Yavatmal in Regular Civil Appeal No.20 of 2017 partly allowing the appeal filed by the petitioner and thereby the judgment and decree passed by the Small Causes Court in Small Cause Civil Suit No.11 of 2013 came to be confirmed and the petitioner was directed to handover vacant and peaceful possession within two months from the date of judgment and decree, is under challenge in this writ petition.
3. The petitioner is original defendant and the respondents are the owners of the suit property i.e. shop admeasuring about 200 sq.ft. The respondents filed a suit for eviction against the petitioner. The said suit was decreed.

4. It is pertinent to note that the respondents have purchased the suit shop from the original owner Sudhatai Masram. It is further important to note that prior to filing the suit for eviction by the respondents against the petitioner, the petitioner filed a suit for cancellation of Sale Deed dated 27/11/2012 executed by Sudhatai in favour of the respondents and for specific performance of the Agreement to Sale dated 31/10/2012 allegedly entered into between the petitioner and Sudhatai Masram-original owner. The said suit is still pending.

5. In the meantime, as stated herein above, the suit filed by the respondents for eviction was decreed and the appeal preferred raising a question to the validity and correctness of the said judgment and decree dated 22/02/2017 passed by the learned Civil Judge Senior Division, Yavatmal in Civil Suit No.11 of 2013 came to be dismissed vide impugned judgment and order dated 14/09/2022.

6. Shri Manohar, learned counsel for the petitioner submits that both the Courts below have failed to appreciate the fact that the suit filed by the petitioner for specific performance in respect of the suit shop and cancellation of the Sale Deed of the respondents is pending. It is submitted that both the Courts below ought not to have passed decree till the time Court decides the suit of the petitioner. It is argued that this is so because if

the suit of the petitioner is decreed and thereby the Sale Deed of the respondents is cancelled and specific performance of the agreement was directed, the relief granted by both the Courts below in the suit for eviction would not survive. He, therefore, submits that it is necessary to not to give effect to the decree till decision of the suit.

7. He further argues that both the Courts below on merit committed error in decreeing the suit against the petitioner.

8. On the other hand, Shri Thakur, learned counsel for the respondents argues that there are concurrent findings recorded by both the Courts below in favour of the respondents as regards determination of the tenancy and also there is a specific finding that the possession of the petitioner is not protected under Section 53A of the Transfer of Property Act, 1882. He, therefore, submits that there is not merit in the present petition, the same may be dismissed.

9. In light of rival submissions, I have perused the record.

10. It is evident from the record that the petitioner is a tenant in the suit shop and even after the respondents purchased the suit shop from the original landlady the

petitioner continues to be the tenant. Since the petitioner failed to establish that he is in possession by virtue of the agreement for sale alleged to have executed by the original landlady in favour of the petitioner and in absence of any denial to the fact that the sale deed was executed by the original landlady in favour of the defendants the plaintiff cannot deny the status of the respondents as landlords, unless the said sale deed is set aside.

11. The learned lower appellate Court has categorically observed that the plaintiff failed to produce the agreement executed by the landlady in his favour and to prove it which entitles him to raise claim in pursuance to the said agreement. The learned lower appellate Court further observed that no reason has been assigned by the plaintiff by not producing the agreement on record and even he has not examined the original landlady to prove the agreement and contention of termination of tenancy.

12. In the said backdrop, once the tenancy is proved and it has been established by the landlord that the petitioner has not paid the rent, the plaintiff is entitled for decree for possession for arrears of rent.

13. Since both the Courts below have recorded findings on appreciation of documentary as well as oral evidence and further as the learned counsel for the petitioner failed to point out any perversity in the

concurrent findings recorded by both the Courts below while decreeing the suit against the petitioner, I do not find any merit in the present writ petition.

Accordingly, the Writ Petition is **dismissed**.
No order as to costs.

JUDGE

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