

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

Writ Petition No.1794 of 2018

Shri Pankaj Devrao Harde and anr. Vs. Shri Prakash Keshavrao Donekar

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

Court's or Judge's Order

Shri R.A. Gupte, Advocate for the Petitioners
Shri S.S. Ghate, Advocate for the respondent-sole

**CORAM : ANIL S. KILOR, J.
DATED : 10th April 2023**

1. Heard.
2. In this petition, the judgment and decree dated 30.11.2015 passed by the *Ad hoc* District Judge – I, Bhandara in Regular Civil Appeal No.110 of 2010, dismissing the appeal and confirming the judgment and decree dated 11.08.2010 in Regular Civil Suit (RCS) No.44 of 2007 passed by Civil Judge Junior Division, Bhandara, decreeing the suit partly and thereby, directing the petitioners to pay arrears of rent and to hand over possession of the suit shop, within one month from the date of judgment and decree, is under challenge.
3. The learned counsel for the petitioners argues that the petitioners were tenant of the trust namely Ramgir Maharaj Deosthan Trust and it was given on rent by Shri Sitaram Paigram, who also agreed to sell the suit premises for Rs.30,000/-, out of which Rs.5,000/- was accepted by him on 22.10.1989.

4. It is pointed out that the respondent filed RCS No.44 of 2007 for possession and arrears of rent against the petitioners on the basis of sale deed. It is submitted that the grounds for eviction were *bona fide* need and non-payment of rent for the period of 01.03.2004 to 28.02.2006. It is submitted that the petitioners paid the rent of the suit premises regularly to the son of Sitaram Paigram and therefore, it cannot be said that the petitioners were in arrears of rent.

5. He further submits that as there was an agreement to sell and as a part performance, the possession of the suit shop was handed over to the petitioners, the petitioners are entitled for protection under section 53A of the Transfer of Property Act, 1882 (for short “the TP Act”).

6. On the other hand, the learned counsel for the respondent-sole, points out that the suit property was purchased by the respondent and accordingly, notice was issued to the petitioners for payment of arrears of rent. It is further pointed out that instead of making payment, the petitioners denied the ownership of the respondent and thereby, failed to pay the arrears of rent. He therefore, submits that both the Courts below have concurrently held in favour of the respondent. Accordingly, he prays for dismissal of the present petition.

7. In the present matter, admittedly, the petitioners without filing any proceedings for specific performance, are seeking protection under Section 53A of the TP Act. The petitioners have also not filed any counter claim in this matter. In the said backdrop, both the Courts below have considered the fact that

the suit shop was purchased by the respondent and despite the notice issued to the petitioners for payment of arrears of rent, it was not paid and denied the title of the respondent over the suit property.

8. Both the Courts below have also observed in favour of the respondent as regards *bona fide* requirement. Both the Courts below have also examined the case of the petitioners that, they perfected the title by way of adverse possession and entitled to be protected under Section 53A of the T.P. Act and the said plea was rejected by both the Courts below by recording detail reasons.

9. As no perversity is pointed out as regards the concurrent findings recorded by both the Courts below, I do not find any merit in the present writ petition. Accordingly, it is **dismissed**.

[ANIL S. KILOR, J.]