



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 345 OF 2021

Akhileshwar Singh s/o Mangal Singh
Age : 52 yrs, occ : business
R/o Row House No.9, Sara Vrundavan,
Balaji Nagar, Wadgaon Kolhati, Waluj,
Aurangabad

Appellant

Versus

1. Mevalal Bhagwat Yadav
Age : 52 yrs, occ : household
R/o Plot No. RX-6/2/11, Vilas
Housing Society, Bajaj Nagar,
MIDC, Waluj, Aurangabad.
2. Anjali w/o Mevalal Yadav
Age : 39 yrs, occ : household
R/o as above.
3. Shaikh Habib
Age : major, occ : service (Constable)
Police Station, Waluj M.I.D.C.
Aurangabad
4. I.C.I.C.I. Bank through Bank Manager,
Adalat Road, Aurangabad

Respondents

WITH

SECOND APPEAL NO. 346 OF 2021

1. Akhileshwar Singh s/o Mangal Singh
Age : 52 yrs, occ : business
R/o Row House No.9, Sara Vrundavan,
Balaji Nagar, Wadgaon Kolhati, Waluj,
Aurangabad
2. Urmila w/o Akhileshwar Singh
Age : 49 yrs, occ : household
R/o as above.

Appellants

Versus

1. Mevalal Bhagwat Yadav
Age : 52 yrs, occ : household
R/o Plot No. RX-6/2/11, Vilas
Housing Society, Bajaj Nagar,
MIDC, Waluj, Aurangabad.

2. Anjali w/o Mevalal Yadav
Age : 39 yrs, occ : household
R/o as above

Respondents

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Mr. Vinod I. Thole, Advocate for appellants in both appeals.
Mr. S.S. Thombre, Advocate holding for Mr. P.D. Jarare,
Advocate for respondent Nos.1 and 2 in both appeals.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment reserved on : 25 JULY 2024

Judgment delivered on : 15 OCTOBER 2024.

COMMON JUDGMENT :

1. The dispute between the contesting parties in both these appeals is in respect of the same subject-matter i.e. Row House No. 9 located in Sara Vrundawan at Waluj at Gut No. 16/P, Wadgaon Kolhati, approximately admeasuring 931 sq.ft. (hereinafter referred to as the "suit house"). Further, this Court has also framed substantial questions of law commonly in respect of both the appeals. Further, the contesting parties to the present dispute are also same in both the appeals. Therefore, both these appeals are taken up for disposal by common judgment though both the learned

Courts below have decided these two proceedings separately. Further, the contesting parties are referred by their first names to avoid ambiguity as they have filed suits against each other in the learned trial Court.

2. One Akhileshwar has filed Special Civil Suit No. 574/2011 against Mevalal, Anjali and others for specific performance of contract which has been dismissed by the learned Civil Judge (Senior Division), Aurangabad i.e. the learned trial Court under the judgment and order dated 17.11.2015. An appeal bearing Regular Civil Appeal No. 75/2016 filed by Akhileshwar against the said judgment has also been dismissed by the learned first appellate Court i.e. Ad hoc District Judge-3, Aurangabad under judgment and order dated 11.10.2019. As such, Second Appeal No. 345 of 2021 is against the concurrent findings of both the learned Courts below.

3. As against this, plaintiffs Mevalal and Anjali have filed Special Civil Suit No. 257/2013 for possession of the suit house which has been decreed by the learned trial Court under judgment and order dated 17.11.2015. An appeal against the said judgment filed by Akhileshwar before the learned first appellate Court bearing Regular Civil Appeal No.

1/2016 is also dismissed vide judgment and order dated 11.10.2019. Thus, Second Appeal No. 346 of 2021 is also filed against concurrent findings of both the learned Courts below.

4. The background facts are as under :

Plaintiff Akhileshwar filed Special Civil Suit No.574/2011 against Anjali, Mevalal and others for specific performance of contract by contending that on 08.09.2006 Mevalal and Anjali agreed to purchase suit house from Sara Builders under an agreement to sale for the consideration of Rs. 8,75,000/-. At that time they also availed loan of Rs. 6,50,000/- from ICICI Bank. According to Akhileshwar, Mevalal and Anjali took monetary help from him to pay installments of Sara Builders. After construction of the suit house, due to financial crisis, Mevalal asked Akhileshwar to pay remaining balance of Sara Builders as well as installments of ICICI Bank and in lieu of the same, they requested Akhileshwar to purchase the suit house. Since Akhileshwar was a business-man and it was difficult for him to obtain loan, he decided to purchase the suit house in the name of Mevalal and Anjali. Akhileshwar deposited all the installments with Sara Builders till 31.01.2008. Mevalal and Anjali also received possession of the suit house in the same

month and immediately they handed over the same to Akhileshwar. Thus, since 14.01.2008 Akhileshwar is in possession of the suit house.

5. Thereafter on 09.06.2008 Anjali and Mevalal executed an agreement for sale on stamp paper of Rs. 100/- in favour of Akhileshwar thereby admitting Akhileshwar's deposit of an amount of Rs. 2,25,000/- with Sara Builders and undertaking of payment of installments of loan amount of ICICI Bank. Akhileshwar also deposited an amount of Rs. 40,000/- towards insurance of the suit house. Then on 15.11.2008 Sara Builders executed sale deed in favour of Mevalal and Anjali which was handed over by them to Akhileshwar. Then Akhileshwar deposited installments with ICICI Bank upto 28.11.2011. Thus, Akhileshwar claimed that he deposited the amount of Rs. 2,65,938/- with Sara Builders, paid the loan of ICICI Bank to the tune of Rs.3,43,475/-, LIC Housing Finance amount of Rs. 55,825, deposited an amount of Rs. 27,253/- in the personal account of Mevalal, paid an amount of Rs. 1,00,000/- vide Demand Draft on 30.03.2011, cash amount of Rs. 1,00,000/- on 27.12.2010 and an amount of Rs. 1,50,000/- on 20.09.2011 by cash to Mevalal. Thus, Akhileshwar is claiming that he

paid excess amount of Rs. 4,32,078/- to Mevalal and Anjali which is to be merged in the loan account of ICICI Bank. Thereafter in the month of November 2011 Akhileshwar requested Mevalal and Anjali to execute the sale deed in his favour, but they avoided for the same. Therefore, Akhileshwar had to file Special Civil Suit No. 574 of 2011 for specific performance.

6. Mevalal and Anjali vide their written statement resisted the said suit. They claimed that they never executed any agreement for sale on 09.06.2008 in favour of Akhileshwar. They denied all the adverse allegations made against them by Akhileshwar and came out with a case that Akhileshwar had in fact prepared forged document of agreement of sale. According to them, crime is also registered by them against Akhileshwar under Sections 420, 468, 471, 120-B read with Section 34 of the Indian Penal Code, whereby R.C.C. No. 1109 of 2012 was registered. As such, they prayed for dismissal of the suit. The trial Court, after conducting the trial, dismissed the suit and appeal filed thereon by Akhileshwar has also been dismissed.

7. On the other hand, Mevalal and Anjali have also

filed Special Civil Suit No. 257 of 2013 against Akhileshwar for possession of the suit house by contending that Akhileshwar was their tenant. Akhileshwar resisted the said suit by reiterating the contents of his plaint in Special Civil Suit No.574 of 2011 and thereby prayed for dismissal of the suit. However, the learned trial Court allowed the said suit of Mevalal and Anjali and directed Akhileshwar to hand over possession of the suit house to them. Akhileshwar filed appeal against the said decree of the learned trial Court, but the same has been dismissed. As such, both these second appeals are against the concurrent findings of both the learned Courts below.

8. Learned Counsel for the appellant Akhileshwar vehemently argued that both the learend Courts below have definitely erred in discarding the suit of Akhileshwar and erroneously granted the suit for possession filed by Mevalal and Anjali. According to him, Mevalal in his suit for possession had in fact claimed that Akhileshwar was his tenant, but the said suit was wrongly tried by Civil Judge, Senior Division despite being a rent suit. He submitted that the learned trial Court was not having any jurisdiction to try the rent suit. According to him, Mevalal failed to establish

the fact that he had in fact paid the amount to Akhileshwar who, in turn, deposited it with Sara Builders. He pointed out that the learned trial Court has failed to appreciate the evidence on record which has definitely led to the inference in favour of Akhileshwar that there was an agreement to sale executed by Mevalal in respect of the suit house. He pointed out that damages could not have been awarded in landlord and tenant suit and the learned trial Court, despite claiming landlord-tenant relationship by Mevalal, gave him possession of the suit house on the basis of his title.

9. On the contrary, learned Counsel for Mevalal and Anjali supported the judgments in both the suits passed passed by learned trial Court as well as learned first appellate Court and submitted that there is no need to re-appreciate the evidence as the findings of both the learned Courts below are based on the evidence on record. He placed reliance on the following judgments :

- (i) Kammana Sambamurthy (D) by LRs vs Kalipatnapu Atchutamma & ors, AIR 2011 SC 103***
- (ii) A.H. Mistry & Co. vs Awadh Narayan Singh Shiv Nayak Singh & ors, MANU/MH/0760/2010***
- (iii) Sultan & ors vs Ganesh & ors, AIR 988 SC 716***
- (iv) Abdulla Bin Ali & ors vs Galappa & ors AIR 985 SC 577***

- (v) *Bal Krishna & ors vs Das & ors, AIR 2008 SC 1786*
- (vi) *Shobha Satyanarayan Birla vs Janabi Parshuram Pawar
MANU/MH/0146/2004*
- (vii) *Sant Lal Jain vs Avtar Singh, AIR 1985 SC 857*
- (viii) *A.C. Arulappan vs Ahalya Naik, AIR 2001 SC 2783*
- (ix) *Havovi Kersi Sethna vs Kersi Gustad Sethna
MANU/MH/0066/2011*
- (x) *Haribhau Baliram Shende & ors vs Pramod Wasudeorao
Rakshamwar & ors, AIR BOM 2; 2021*
- (xi) *Mundri Lal vs Sushila Rani and another
2007 AIR (SCW) 5962*
- (xii) *Kashinath Gosavi Patil vs Govala Vyankanna Tatayya
1995 (1) Mh.L.J. 861.*

10. Heard rival submissions. Also perused impugned judgments alongwith record and proceedings.

11. Admittedly, this Court vide order dated 23.08.2021 has framed the following substantial questions of law common in both these appeals :

A) Whether Second Appeal No.346 of 2021 is maintainable in view of Dattatraya Krishna Jangam vs Jairam Ganesh Gore, reported in AIR 1965 Bombay 177 ?

B) Whether the Civil Judge Senior Division had jurisdiction to decide Special Civil Suit No.257 of 2013 wherein the plaintiffs contended the relationship of landlord and tenant and whether the provisions of Maharashtra Rent Control Act are applicable to the suit premises ?

C) Whether Special Civil Suit No.257 of 2013 was for seeking eviction of tenant under the provisions of Maharashtra Rent

Control Act or it was suit for possession on the basis of title ?

D) Whether the plaintiffs in Special Civil Suit No.257 of 2013 were entitled to get possession and damages as prayed ?

E) Whether the plaintiff in Regular Civil Suit No.75 of 2016 had proved that defendants No.1 and 2 therein had entered into agreement to sell the suit property on 09-06-2008 in his favour?

F) Whether the said plaintiff was and is ready and willing to perform his part of the contract ?

G) Whether the plaintiff therein was entitled to the relief of specific performance of the contract or alternatively the Courts below ought to have granted refund of the amount paid by him towards the mitigation of loan taken by defendant No.1 ?

H) Whether the Judgment and decree in both the cases passed by the Courts below are perverse and require interference by this Court ?

12. It is significant to note that the learned trial Court as well as learned appellate Court, both have given negative finding to the claim of Akhileshwar that Mevalal and Anjali had agreed to sell the suit house to him for consideration of Rs. 8,75,000/- and accordingly the agreement of sale dated 09.06.2008 was executed. Further, it is found by both the learned Courts below that Akhileshwar could not establish the fact of making additional payment of Rs. 4,32,078/-, and therefore, he was not entitled to the relief of specific performance of the said contract. On going through the evidence on record as well as impugned judgments, it is

clearly evident that both the learned Courts below have discussed the evidence of Akhileshwar in support of the alleged agreement to sale dated 09.06.2008 and thereafter found that the same is not convincing. It appears that Akhileshwar has examined PW-2 Jaikumar as well as PW-3 Gulab for proving execution of the said agreement of sale at Exh.100. However, on going through the evidence of PW-2 Jaikumar, it is evident that he was running a Tea Stall at the relevant time in front of Jain Casta Company, Aurangabad where Akhileshwar, Mevalal and Gulab used to visit frequently. Though he deposited that on 09.06.2008 agreement of sale (Exh.100) was executed and he also signed the same, but it has come on record that the said Tea Stall which was in front of Jain Casta Company wherein Mevalal was in service and the said company was closed in the year 2001 and thereafter Mevalal was in service at Nashik and Pune. Further, there is no record of existence of said Tea Stall of Jaikumar after closing of Jain Casta Company. Thus, the evidence of Jaikumar that Akhileshwar and Mevalal had come to his tea stall on the day of agreement of sale i.e. 09.06.2008 and executed the document, is not at all convincing. Moreover, PW-2 Jaikumar as well as PW-3 Gulab have stated about execution of agreement of sale only between

Akhileshwar and Mevalal. However, at that time Anjali was also joint owner of the suit house, but nothing is there on record as to why the said agreement of sale was executed in absence of Anjali. Moreover, there is nothing on record to show that Anjali was having it's knowledge and had impliedly consented for the same. Thus, both the learned Courts below have concurrently discarded the evidence of PW-2 Jaikumar and PW-3 Gulab.

13. Further, it appears that PW-4 Sahebrao Shelke is examined by Akhileshwar to prove the factum of payment to Mevalal on varous occasions, but this witness in his cross-examination has clearly admitted that he had no knowledge with regard to any house transaction between Akhileshwar and Mevalal. He further admitted that he had not seen any particular document to show that Akhileshwar was having the aforesaid amounts which he paid to Mevalal. Thus, the evidence of Akhileshwar adduced in respect of execution of agreement of sale (Exh.100) and in respect of additional excess payment, is not at all convincing, and therefore, it is discarded by both the learned Courts below by assigning proper reasons. Thus, the evidence definitely shows that Akhileshwar failed to prove execution of agreement of sale in

respect of the suit house in his favour by Mevalal. Further, Akhileshwar has also failed to establish the fact of making payment to Mevalal towards consideration of suit house. Readiness and willingness is also missing on the part of Akhileshwar, and therefore, claim of specific performance appears to be rejected by both the learned Courts below properly on the basis of evidence.

14. Learned Counsel for Akhileshwar has raised substantial question of law about the jurisdiction of learned trial Court in granting decree of possession despite it was claimed by Mevalal that Akhileshwar was his tenant. However, for that purpose if the judgment of the learned trial Court in Special Civil Suit No.257 of 2013 is seen, then it appears that the learned trial Court, based on the observation of the Hon'ble Apex Court, has come to the conclusion that when the defendant has denied relationship of landlord and tenant, then the Court can pass decree of possession on the basis of title. Here also though Mevalal has failed to establish the landlord-tenant relationship between himself and Akhileshwar, but when it is not disputed that he had already become owner, then as per the aforesaid observation the decree directing Akhileshwar to hand over possession of suit

house to Mevalal on the basis of title, is definitely legal and passed with jurisdiction. It is to be noted that the learned trial Court as well as learned first appellate Court have concurrently observed that the learned trial Court was having jurisdiction to pass the decree of possession on the basis of title. Thus, the substantial question of law formulated to that effect is already answered satisfactorily by both the learned courts below.

15. It is extremely important to note that the Hon'ble Apex Court has settled the issue in respect of scope of second appeal. It has been observed that if the findings of both the learned Courts below are based on proper appreciation of evidence, then re-appreciation of evidence by the High Court is not permissible unless the findings by both the learned Courts below are perverse. In the present two proceedings both the learned Courts below, after proper appreciation of evidence on record, have held that Akhileshwar miserably failed to establish that Mevalal had executed agreement of sale in his favour and Akhileshwar had in fact paid part consideration of the suit house. This fact has been clearly established due to certain admissions on the part of the witnesses of Akhileshwar. Further, the maintainability of the

suit filed by Mevalal for getting the decree of possession is also supported by the observation of the Hon'ble Apex Court though Mevalal had claimed that Akhileshwar is his tenant. Therefore, the substantial questions of law formulated by this Court as aforesaid, are already answered satisfactorily or some of them appeared to be not involved actually. Considering all these aspects, there is no need to discuss the judgments relied upon by the learned Counsel for Mevalal and Anjali. Hence, both the Second Appeals being devoid of merit, stand dismissed and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)