



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.119 OF 2024

1. Vijaysingh Babusingh Pardeshi,
Age: 57 years, Occu: Washerman,
2. Vikramsingh Babusingh Pardeshi,
Age: 52 years, Occu: Washerman
Both R/o. Behind Shahid Mosque,
Sant Sena Chowk, Tamboli Lane,
Shahada, Tq. Shahada, Dist. Nandurbar ..Appellants
(Orig. Defendants.)

Versus

Kazi Ahmed Mujtaba Mohammad,
Age: 76 years, Occu: Advocate
R/o. Nehru Chow, Shahada,
Tq. Shahada, Dist. Nandurbar. ..Respondent
(Orig. Plaintiff)

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Mr. R. J. Nirmal, Advocate for the Appellants.
Mr. H. V. Tungar h/f Mrs. Sabahat T. Kazi, Advocate for
Respondent.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 14th NOVEMBER, 2024.**

ORDER:-

1. The appellants/original defendants are aggrieved by the judgment and decree passed by District Judge-1, Shahada dated 27.01.2024 in Regular Civil Appeal No.23/2023, thereby confirming judgment and decree dated 28.02.2023 passed by the Civil Judge, Senior Division, Shahada in Regular Civil Suit No.75/2019. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The respondent/plaintiff filed Regular Civil Suit No.75/2019 contending that suit property bearing CTS No.846 situated at Nehru Nagar Chowk, Shahada is owned by him. The grand-father and grand-mother of defendants had cordial relations with plaintiff's family. Out of their love and affection, plaintiff allowed them to use suit property for laundry business. After demise of grand-parents of defendants, defendants were also permitted to use suit property till occurrence of fire incident dated 01.05.2019. The defendants had shifted their laundry business to adjacent CTS No.842 in the shop of one Prakash Askar. The vacant possession of suit property was handed over to plaintiff for proposed new construction. However, latter on, defendants without permission of plaintiff erected plywood structure over suit property and installed iron shutter. They changed the nature of the property without consent of the plaintiff. The plaintiff sent notice dated 09.09.2019 to defendants asking to deliver vacant possession. The defendants failed to act upon notice and continued to enjoy wrongful possession over the property. Hence, plaintiff filed suit claiming decree of possession and mesne profit.

3. The defendants refuted claim of plaintiff alleging that their grand-father had laundry business over the suit property. The suit property was handed over to grand-parents of defendants on rent basis @ Rs.12.50/- per month and free laundry service to plaintiff's

family. The possession of defendants continued till occurrence of fire incident dated 01.05.2019. Even after incident of fire, defendants carried necessary repairs and installed iron shutter and continued to occupy property. The names of the defendants are inserted as tenants in tax assessment made by the Shahada Municipal Council in the year 2015-16.

4. The Trial Court framed the issues based on pleadings of the parties and after recording of evidence concluded that plaintiff is owner of suit property. The case of the defendants that they are tenants in the suit property was negated. Consequently, decree for possession and damages at the rate of Rs.4000/- per month has been passed. The Appellate Court confirmed the aforesaid decree.

5. Mr. Nirmal, learned Advocate appearing for the appellants submits that both the Court below failed to consider that there is voluminous evidence indicating continuous possession of defendants over suit property. At the time of incident of fire, property sustained damage. The defendants after necessary repairs, restarted business in the same premises. The plaintiff has cunningly taken plea of permissive possession of defendants, although it is a case of lease.

6. Per contra, Mr. Tungar, learned Advocate appearing for the respondent/plaintiff submits that both the fact finding Courts

concurrently arrived at finding that it is a case of permissive possession. The defendants' theory regarding tenancy has been negated by both the Courts. The concurrent findings of the fact need not be disturbed in second appeal.

7. Having considered submissions advanced and on perusal of the reasoning adopted by the Courts below, it can be observed that there is no dispute that plaintiff is owner of suit property. The only question that was raised for consideration before the Court was as to nature of possession of defendants. The plaintiff comes with the case that due to cordial relations with plaintiffs family, grand-parents of defendants were given permissive possession of the suit property for laundry business. On other hand, defendants contend that it was a case of monthly tenancy. The Trial Court framed the specific issue as to "whether defendants prove that they are tenants of suit property since their ancestors?". The issue is answered in negative. The Trial Court observed that defendants could not answer specific question put during cross examination as to when tenancy was created and what were the terms and conditions. No documentary or oral evidence is adduced indicating payment of rent. Pertinently, DW-1 admits during the course of cross-examination that he or his father never informed Municipal Council regarding tenancy, He is unable to tell since when they were tenants, no accounts were ever settled as regards to the rent

and no evidence is available depicting payment of rent. After incident of fire, in a meeting held in the shop of Altaf Memon, defendants had requested to lease out shop, but plaintiff denied the same. At the time of entry of defendants' father in the suit property, terms and conditions were never decided. He admits that construction is raised by him after 15.08.2019 without permission of plaintiff.

8. The Trial Court as well as Appellate Court recorded concurrent findings of fact that it is a case of permissive possession. It is also observed that defendants have forcibly entered into the suit property on 15.08.2019 and introduced changes in nature of construction. In view of the concurrent findings of fact, no case is made out for interference in this Second Appeal and no substantial question of law arises for consideration.

9. Hence, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE