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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.111 OF 2024

Vishal Chandan Bharti and Others

APPELLANTS

VERSUS

Pravin Harishchandra Bharti

RESPONDENT

.....
Mrs. Rutuja Jakhade h/f Mr. S. A. Kulkani, Advocate for appellants
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2024

ORDER :

1. This second appeal is filed by original defendants, taking exception to the judgment and decree passed by learned Civil Judge, Junior Division, Shindkheda in Regular Civil Suit No. 52 of 2014 dated 1st March, 2019 and the judgment and decree passed by learned District Judge-2, Dhule in Regular Civil Appeal No. 28 of 2019 dated 30th March, 2024.

2. Respondent – plaintiff filed the suit for possession of shed, on the basis of ownership and for mesne profit. It is the case of the plaintiff that property, described in paragraph No.2 of the plaint, comprising of a shed admeasuring 56 feet X 28 feet, situated in Gut No. 43/1 Mauje Salve, Taluka – Shindkheda, District – Dhule, is the suit property (hereinafter for brevity will

be referred as "suit shed"). Plaintiff claimed that he and the defendants are relatives and are residing in the same village. The suit shed was used by workers for keeping agricultural equipments and it was also used as cow shed. When plaintiff was working in Ahinsa Polytechnic College at Dondaicha, he had applied for permission to start hotel in the suit shed, however, since the property had no NA permission, permission to start hotel there was refused.

Since defendant was having business of crains and digging well and he was running hotel in the name "Shri Sai Baba ka Dhaba" he requested plaintiff to let out the suit shed for keeping material. Plaintiff acceded to the request of defendant. Plaintiff got knowledge that defendants are trying to start hotel business in the suit shed, without his permission and they were making preparations for the same. On inquiry by plaintiff, defendants replied that the suit shed is the proper place to start hotel business and they will pay Rs.12,000/- per month towards rent. Thereafter, without permission of plaintiff, defendants started their hotel business in the month of July, 2012, however they did not pay the agreed rent to plaintiff. Plaintiff, therefore, issued notice dated 19th May, 2014 and claimed back possession of suit shed. By reply dated 3rd June, 2014, defendants replied that they have started hotel business in partnership with plaintiff and they

have invested Rs.8 to 10 lakh for electricity connection, tables, furniture, levelling of ground etc. and till November, 2012, they have paid Rs.1500/- towards rent. Plaintiff, therefore, filed suit for vacant possession of suit shed and for mesne profit.

3. Defendants No.1 to 3 appeared and filed their written statement, contending that alleged transactions of plaintiff is with defendants No.1 and 2 and defendant No.3 has no concern with the same. They denied all the contentions of plaintiff. They claimed that since defendant No.1 was having experience of hotel business, in the year 2011 plaintiff requested defendant No.1 to start hotel business in the suit shed. Since plaintiff was not having sufficient funds, defendant No.1 invested Rs.8 to 10 lakh for development of the shed, to run hotel business there and thereafter hotel Bharti was started there. Defendant No.1 helped plaintiff for getting license of hotel from the concerned authorities. Since land was in the name of plaintiff, defendant No.1 deposited Rs.500/- in the name of plaintiff towards license fees on 23rd July, 2012. They further contended that as there was change in circumstances and the hotel business was not running well, plaintiff requested defendant No.1 to handle said business till he recovers the amount invested by him and requested him to pay Rs.1,500/- per month towards rent of suit shed. Accordingly, defendant No.1 started paying rent to plaintiff from November,

2012, but plaintiff never issued any receipt. Rent was paid till 1st April, 2014 and, there was no default. With a view to extract more rent from defendant No.1 and to avoid paying amount invested by defendant No.1, false suit is filed.

4. Trial Court, after recording evidence, decreed the suit and directed defendants No.1 to 3 to hand over vacant possession of the suit shed to plaintiff within one month. Plaintiff was also held entitled to get mesne profit from the date of passing of the judgment and decree till receiving the actual possession of the suit shed. Defendants unsuccessfully challenged judgment and decree passed by Trial Court, in Regular Civil Appeal No. 28 of 2019, hence the present second appeal.

5. Heard learned advocate for appellants. Perused the documents placed on record.

6. Documents on record indicate that it is not in dispute that the suit shed and the agricultural land on which it stands, belongs to plaintiff, which was purchased by him from one Vedu Rajdhar Badgujar. Admittedly, the suit shed is in possession of defendants. According to plaintiff, he had gratuitously given the suit shed to defendants to keep articles.

7. There is no material on record, except oral evidence of DW-

1 Vishal Bharati, DW-2 – Rajendra Pardeshi, DW-3 Vijay Thakur and DW-4 Atul Bharati, to show that hotel was being run by defendant No.1, in partnership with plaintiff. In their cross-examination, they have admitted that neither there is any written partnership deed executed between plaintiff and defendants nor they have witnessed any business transaction between them. Contention of defendant No.1 that he was paying Rs.1500/- rent to plaintiff, runs counter to the partnership theory propounded by defendants. Defendant No.1 has failed to prove the fact that the suit shed was let out to him on monthly rent of Rs.1,500/-

In cross examination, defendant No.1 has admitted that he has no documentary proof to show that Rs.8 to 10 lakh expenses were incurred by him for development of hotel. No evidence, whatsoever is led by defendant No.1 in support of the said contention.

8. Though defendant No.1 claimed that he was running hotel, as on the date of his deposition, the said fact was denied by plaintiff. Plaintiff filed photographs (Articles A to F), which were confronted to defendant No.1 during his cross-examination and defendant No.1 admitted that all the photographs are of the suit shed. The photographs reveal that the suit shed is in dilapidated

condition and the same is not in use. No tables, chairs or counter is seen in the suit shed. Even public access is not seen to the suit shed. It is, therefore, not possible to accept that defendant No.1 was running hotel business in the suit shed.

9. In the light of aforestated evidence, Trial Court has rightly held that :

“the suit shed belongs to plaintiff and the defendant No.01 has failed to show that, he has incurred huge expenses over it. Therefore, the plaintiff being the owner of the suit shed is entitled for the vacant possession from the defendants. ... It is evident that, the defendants are not using the suit shed and they have not returned the possession of suit shed, even after they received notice (Exh. N.21) issued by plaintiff. On the contrary, they replied with reply notice (Exh. No.22). This shows that defendants have deliberately withhold the possession of suit shed without any sufficient cause.”

The Trial Court, therefore, has rightly held that plaintiff is entitled for possession of the suit shed, along with mesne profit.

10. Appellate Court has confirmed the judgment and decree passed by Trial Court, by assigning proper reasons.

11. There is no illegality or perversity in the impugned judgments and decrees. Concurrent findings of facts are not liable to be interfered with in the present appeal, as no substantial question of law is involved in this appeal. Second Appeal being devoid of merit, is dismissed with no order as to costs.

**[NITIN B. SURYAWANSHI]
JUDGE**