



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

**SECOND APPEAL NO. 601 OF 2019
WITH CIVIL APPLICATION NO. 11684 OF 2019**

**ALKABAI RAJENDRA PATIL @ ALKABAI DILIP CHOUDHARI
VERSUS
RAJENDRA BABURAO CHOUDHARI**

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Mr. Chandrakant P. Patil, Advocate h/f Mr. Amol Sawant, Advocate
for appellant

Mr. Vinesh C. Solshe, Advocate h/f Mahesh H. Patil, Advocate for
respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 17 APRIL 2024

PER COURT :-

1. Heard both the sides at length.
2. The present appeal is directed against the judgment and decree dated 26.04.2019 passed by the learned District Judge-3, Dhule in Regular Civil Appeal No.11 of 2017 arising out of the judgment and decree dated 14.12.2016 passed by the learned 2nd Joint Civil Judge Junior Division, Dhule in R.C.S. No.117 of 2015.
3. The appellant is the original defendant and the respondent is the original plaintiff in R.C.S. No.117 of 2015. For

the sake of brevity, I would like to refer the parties to the suit in their original capacity.

4. The respondent/plaintiff filed R.C.S. No.117 of 2015 and prayed for recovery of arrears of rent and possession of the suit property. The plaintiff contended that he is the owner of suit property by virtue of sale-deed dated 20.07.2009. The defendant had taken the suit property on the rental basis of Rs.100/- per month in the year 2008 from the previous owner of the property i.e. Mr. Gokul Sutar. The defendant earlier paid rent to the previous owner. But after the plaintiff purchased the suit property, the defendant never paid rent to him and committed default of payment of rent for 68 months i.e. Rs.6,800/-. Therefore, on 09.03.2015, the plaintiff issued notice and terminated tenancy of the defendant and demanded arrears of rent. The plaintiff also called upon the defendant to deliver vacate possession of the suit property, but the defendant failed to vacate the same and not paid arrears of rent. Therefore, the plaintiff filed suit and claimed for possession and recovery of rental amount. After service of summons, though the defendant appeared, but he failed to file written statement. Hence, the suit was proceeded without written statement vide order dated 11.08.2015.

5. In order to prove the claim, the plaintiff filed evidence affidavit at Exh.12 and proved the documentary evidence registered sale-deed Exh.16, 7/12 extract Exh.20, Notice dated 09.03.2015 Exh.21, reply notice Exh.15. The plaintiff examined Mr. Gokul Manik Sutar, the predecessor in title as PW2 and proved letter Exh.24.

6. After hearing the parties, on 14.12.2016, the learned trial Court passed the judgment and decree and dismissed the suit of the plaintiff on the ground that as per the provisions of Section 15(2) of the Maharashtra Rent Control Act, the suit is not maintainable prior to expiry of period of 90 days from service of notice upon the defendant/tenant. However, the suit of the plaintiff for recovery of possession and rent was filed prior to expiry of said period.

7. Being aggrieved by the said findings, the plaintiff filed Regular Civil Appeal No.11 of 2017 before the first appellate Court. On 26.04.2019, the learned first appellate Court passed the impugned judgment and decree holding that the suit property is not governed under the provisions of the Maharashtra Rent Control Act on the ground that at the relevant time, village Warkhede, where the property is situated, was not part of the Dhule Municipal Corporation.

Since the property was situated outside territorial jurisdiction of Dhule Municipal Corporation, therefore, it is governed under the provisions of Transfer of Property Act, 1882 and set aside the judgment and decree dated 14.12.2016 passed by the learned trial Court.

8. The learned Counsel appearing for the appellant in vehemence canvassed that the plaintiff has not pleaded about standing of property outer limit of the Dhule Municipal Corporation and the provisions of the Maharashtra Rent Control Act are not applicable to the property. The learned trial Court considered the provisions of Section 15(2) of the Maharashtra Rent Control Act. However, the learned first appellate Court reversed the findings on the ground that the provisions of the Maharashtra Rent Control Act are not applicable to the suit property. Therefore, the impugned judgment and decree is illegal, bad in law, hence prayed for quash and set aside the same.

9. Per contra, the learned Counsel appearing for the respondent supported the findings recorded by the learned first appellate Court and contended that when the plaintiff had purchased

the property, it was not within the jurisdiction of Dhule Municipal Corporation. Therefore, the provisions of the Maharashtra Rent Act is not applicable. However, the suit property is governed under the provisions of the Transfer of Property Act. Therefore, the learned first appellate Court rightly appreciated the facts and circumstances of the case as well as the provisions of law and passed the order. Therefore, there is no illegality or perversity, hence prayed for dismissal of the appeal.

10. Needless to say that the plaintiff claimed for recovery of rent and possession of the suit property on the ground that the defendant is in arrears of rent. The defendant has not denied the title of the plaintiff being the owner. The defendant has not denied that he is in occupation of suit property being a tenant. On face of record, it appears that on 20.07.2009, the plaintiff purchased the suit property from Mr. Gokul Manik Sutar PW2. Since the defendant failed to file written statement, and not lead evidence. It is not contention of the plaintiff that the suit property is governed under the Maharashtra Rent Control Act at the time of filing of the suit. The learned trial Court failed to considered that, whether the suit property is governed under the Transfer of Property Act or exclusively under the provisions

of the Maharashtra Rent Control Act. According to the Plaintiff the suit property is situated out of jurisdiction of Dhule Municipal Corporation. The learned first appellate Court held that, at the relevant time, village Warkhede, where the property is situated, was not part of Dhule Municipal Corporation and this evidence has not been challenged by the defendant/tenant. Since the property was situated outside the jurisdiction of Dhule Municipal Corporation, therefore, certainly it governed under the provisions of the Transfer of Property Act. Therefore, I do not find that the impugned judgment and order is illegal, perverse and no any substantial question of law is involved. Hence, the present Second Appeal is dismissed.

11. In view of dismissal of the appeal, civil application No.11684 of 2019 is disposed of.

[Y. G. KHOBRADE, J.]

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