

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 842 OF 2022

Mr. Ahmed Mohammad Hussain Kazi
(Decd. Thr. LRs.) Smt. Najama Ahmed
Kazi and Ors.

} **..Appellants**

V/S.

Mr. Bhagwan Gulabrao Deshmukh (Decd.
Through LRs) Mrs. Ratnaparabha Bhagwan
Deshmukh and Ors.

} **..Respondents**

Mr. Pradeep S. Gole, for the Appellants.

Mr. Sharad N. Chandrachud, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 8 APRIL 2024.

P.C. :

1) By this Appeal, Appellants challenge the Judgment and decree dated 3 October 2022 passed by the Ad-hoc District Judge-1, Satara dismissing Regular Civil Appeal No. 272 of 2014 and confirming the Decree dated 6 September 2014 passed by the Joint Civil Judge Junior Division, Khandala in Regular Civil Suit No. 34 of 2011. The Trial Court has decreed the suit filed by the Plaintiff-lessor by directing the Defendant-lessee to handover vacant and peaceful possession of the suit premises to the Plaintiff. It appears that the Plaintiff claims ownership in respect of the suit property and the same was given on lease to Shivram Sitaram Doiphode who subletted the same in

favour of the Appellant/Defendant. Plaintiff terminated the tenancy of Shri. Dohiphode and filed Regular Civil Suit No. 61 of 1988 for recovery of possession of the suit property, both against Dhoiphode, as well as, Defendant/sub-tenant. In that suit, compromise took place on 9 February 2000 between the Plaintiff and the Defendant under which the Defendant admitted ownership of the Plaintiff and agreed to pay monthly rent of Rs.300/- to the Plaintiff w.e.f. 1 January 2000. Apparently, the Defendant paid rent to the Plaintiff till September 2002 and thereafter remained in arrears of rent. Plaintiff sent notice to the Defendant on 18 January 2011 terminating the tenancy and seeking recovery of the property on 31 January 2011. Plaintiff thereafter filed Regular Civil Suit No. 34 of 2011 on 4 March 2011 seeking recovery of possession of the suit property from the Appellant-Defendants. The Trial Court has decreed Regular Civil Suit No. 34 of 2011 directing the Appellants-Defendants to handover possession of the suit property to the Plaintiffs, in addition to direction to pay rent of Rs.10,500/- Appeal filed by the Appellant-Defendant has been dismissed by the first Appellate Court on 3 October 2022.

2) I have heard Mr. Gole, the learned counsel appearing for the Appellant and Mr. Chandrachud the learned counsel appearing for Respondent Nos.1(a) and 1(b).

3) Mr. Gole has raised three contentions in support of the Appeal. Firstly, he would contend that the description of the suit property was faulty which was the fit reason for dismissal of the suit. Secondly, he would submit that the notice issued by the Plaintiff was in violation of provisions of Section

106 of the Transfer of Property Act as the notice was not for a period of 15 clear days. Thirdly, Mr. Gole would submit that as per the Appellate Court, the Appellant showed willingness to deposit the amount of arrears of rent and therefore the benefit of provisions of Section 114 of the Transfer of Property Act ought to have been extended to the Appellant.

4) So far as the first point of incorrect description of the suit property is concerned, it is seen that from the compromise effected in previous Regular Civil Suit No. 61 of 1988, the Appellant-Defendant admitted that the area of the suit property is 13 ft x 11 ft. On account of this admission on the part of the Defendant, it was no longer open to raise the dispute about description of the property in subsequent Regular Civil Suit No. 34 of 2011.

5) So far as the second contention about validity of notice issued under Section 106 of the Transfer of Property Act is concerned, though the Notice dated 18 January 2011 is served on the Defendant on 21 January 2011 fell short of 15 days provided under Section 106, provisions of sub-section (3) of Section 106 are clearly attracted in the present case. Though notice fell short of period of 15 days, the suit for ejectment was filed on 4 March 2011. Therefore, notice cannot be said to be bad in law in view of the provisions of Section 106(3) of the Transfer of Property Act.

6) The third issue is about non-extension of protection under Section 114 of the Transfer of Property Act by the first Appellate Court. It is undisputed that before the Trial Court that, Appellant-Defendant never

showed willingness to pay arrears of rent. Such willingness was shown directly before the first Appellate Court. True it is that Appeal is continuation of suit and in appropriate cases, even the Appellate Court can permit deposit of arrears of rent under Section 114 of the Act. However, the first Appellate Court has considered the conduct of the Defendant in the present case. Far from showing any willingness to pay the arrears of rent to the Plaintiff on the first date of hearing of the suit, the Defendant took a specific stand in the Written Statement disputing ownership of the Plaintiff over the suit property. He claimed that he is the actual owner of the suit property. Thus, Defendant had no intention of clearing the arrears of rent during pendency of the suit. In my view, therefore the first Appellate Court has rightly denied the benefit of Section 114 to the Defendant.

7) No substantial question of law is involved in the Appeal. Second Appeal is accordingly **rejected**. With rejection of Appeal, Interim Application taken out for stay does not survive. The same also stands disposed of.

8) The amount of arrears of rent deposited by the Appellant before the first Appellate Court shall be adjusted towards execution of the Decree passed by the Trial Court.

[SANDEEP V. MARNE, J.]

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