



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Second Appeal No. 198 of 2009

Mr. Kona Narsingh Rao s/o Kona
Hanumantrao Nayadu,
Aged about 69 years, Occ. : Business,
R/o. Civil Lines, Wardha,
Tah. And Distt. Wardha (dead)

Through legal representatives

(1) Miss K. Anuradha S. Nayadu
Aged about 28 years, Occ-Doctor

(2) Miss K. Arundhati S. Nayadu
Aged about 24 years, Occ-Student
Both R/o Bungalow No. 5, Civil Lines,
Wardha.

... Appellants

- Versus -

Akhtar s/o Abdul Hamid,
Aged about 40 years,
Occ : Business, R/o. Station Fail,
Wardha, Tah. And Distt. Wardha.

... Respondent

Mr. K. R. Giripunje, Advocate instructed by Mr. S. V. Sirpurkar, Advocate
for the appellant

Mr. V. A. Lohia, Advocate instructed by Mr. D. R. Khapre, Advocate for
the respondent

CORAM : ANIL L. PANSARE, J.

DATED : 25-11-2024

JUDGMENT

The appeal has been admitted on following substantial
question of law.

Amended
as per
Court's
order dtd.
12-9-2014

“Whether the first appellate court fell in error in allowing the appeal particularly when it found that the plaintiff was the owner and that the defendant had failed to establish a case of tenancy ?’

2. The appellant – plaintiff filed a suit for possession and damages. Briefly stated, the case of the appellant was that the father of respondent – defendant was running a business of repairing 2/3 wheelers in the suit premises under the agreement of agency. The respondent’s father agreed to pay Rs. 1500/- per month towards the agency charges. Respondent’s father expired two years prior to filing suit. The respondent continued the business but without any authority and, therefore, his possession over the suit property was unauthorized. The respondent through written statement, though, did not dispute ownership of the appellant, set up a defence of existence of a tenancy. According to the respondent, there was no relationship of principal and agent between the appellant and respondent’s father and the agreement to that effect filed by the appellant was a forged document. The respondent averred that in the year 1997, he approached the appellant to let out the premises at a monthly rent of Rs. 250/- for running a business of auto work. Thus a relationship of landlord and tenant was pleaded in the written statement.

3. Both the Courts below held that the appellant failed to prove that there was relationship of principal and agent between the appellant and respondent's father. On the point of decree for possession, the trial Court held that since the respondent has not disputed the ownership and since he failed to establish relationship of landlord and tenant, the appellant is entitled to recover possession of the suit premises.

4. The first appellate Court reversed this finding on the ground that trial Court did not frame issue of tenancy and has erroneously put a burden on the respondent. The first appellate Court was of the view that since the appellant failed to establish his case of principal and agent, there was no reason for the trial Court to go into the defence put forth by the respondent. As such, the first appellate Court has concurred with the trial Court's finding that the respondent, on the strength of evidence, failed to establish the relationship of landlord and tenant, however, such failure was held to be not sufficient to prove appellant's case.

5. In context with above, learned counsel for the appellants has argued that even if, the appellant failed to prove the relationship of principal and agent with the respondent's father, the possession was sought on the basis of undisputed ownership over the suit premises

coupled with allegation of unauthorized occupation of suit premises. The respondent has raised a plea of tenancy and, therefore, the trial Court has rightly dealt with the said aspect, which is connected with issue no. 4 formulated by the trial Court. The fourth issue was whether the plaintiff is entitled for decree of possession of the suit premises. According to him, the appellate Court committed error in not examining the aspect of unauthorized occupation of the suit premises.

6. As against, learned counsel for the respondent submits that both the Courts below found that the appellant failed to establish his case. According to him, the law is well settled that plaintiff has to stand on his own legs and not to establish the claim on the basis of failure of the defendants to prove the defence. Accordingly, he supported the findings of the first appellate Court.

7. Having given thoughtful consideration to the submissions made by both sides, in my view, the appellant has come up with a case in two parts, the first is, his relationship of principal and agent with the respondent's father which he failed to prove before the Courts below. The second is, respondent continued the business after the death of his father without there being any agreement between the parties. In the circumstances, even if, the appellant failed to prove his relationship with respondent's father, that by itself will not make legal, the

respondent's occupation over suit premises. Here the respondent's defence is significant, because he has set up a defence of existence of tenancy, which he admittedly failed to prove before both the Courts below.

8. The first appellate Court was of the view that issue of landlord and tenancy ought to have been framed. As such, such specific issue would have facilitated the Court to appreciate the evidence in an organized manner but absence of issue has not caused any prejudice to the parties, particularly, respondent. The respondent has led evidence on this point but failed to prove the tenancy. Both the Courts below have rendered a concurrent finding on this point. In that sense, the evidence is writ large on unauthorized occupation of the respondent. There is no dispute that appellant is owner of the suit premises. In the circumstances, it was for the respondent to establish that his occupation is authorized.

9. This aspect has been examined by the trial Court under the fourth issue wherein plaintiff's entitlement for decree of possession of the suit property was tested. The plaintiff averred in the plaint and adduced evidence that respondent had no right to occupy the suit premises. The respondent failed to prove that he was authorized to occupy the suit premises. Having failed to do so, in my view, the trial

Court had correctly decreed the suit. The first appellate Court committed apparent error in arriving at the contrary conclusion, despite noting that the petitioner was the owner and the respondent failed to establish a case of tenancy. The substantial question of law is accordingly answered in the affirmative, meaning thereby that, the appellant has made out a case.

10. The second appeal is accordingly allowed. The judgment and decree dated 5-11-2008 passed by District Judge-2, Wardha in Regular Civil Appeal No. 25/2004 is quashed and set aside. Judgment and decree dated 6-1-2004 passed by 5th Joint Civil Judge Junior Division, Wardha in Regular Civil Suit No. 417/1999 is restored.

11. Second appeal is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

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