



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.374/2007

Kashinath s/o Dagadappa Unhale,
aged 42 yeas, Occ. Agriculture,
r/o Amboda, Taluka Mahagaon,
District Yeotmal

.....APPELLANT

...V E R S U S...

Vilas s/o Nagorao Tayde,
aged 42 years, Occ. Agriculturist,
r/o Amboda, Tq. Mahagaon,
District Yeotmal.

...RESPONDENT

Mr. A. C. Dharmadhikari, Advocate for appellant.
None for respondent, though served.

CORAM:- ANIL L. PANSARE, J.
DATED :- 07.02.2024

ORAL JUDGMENT

Heard.

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

“1. Whether the Courts were justified in decreeing the counter claim of the defendant and permanently restraining the plaintiffs from obstructing the peaceful possession of the defendant which was based on a lease-deed which was admittedly an unregistered document, more so when the Courts recorded a clear finding of fact that the plaintiff/appellant is the owner of the suit property?”

2. Whether the appellate Court ought to have considered the entire evidence rendered by the parties on record, being the final fact finding Court, specially when the trial Court had dismissed the oral evidence of the witnesses and the documentary evidence in detail?”

3. The facts necessary to decide the appeal are as under.

The appellant-plaintiff had filed suit against the respondent-defendant for permanent injunction, restraining him from obstructing peaceful possession, enjoyment and vahivat of suit field. The respondent has resisted the claim by filing written statement and has also filed counter claim. The respondent claims himself to be in possession of the suit field on the basis of the lease deed allegedly executed on 15.04.1995, for a consideration of Rs.65,000/- for 20 years.

4. The learned counsel for the appellant has invited my attention to lease deed Exh.-41. Admittedly, the lease deed is not registered. The law on this point is well settled. The Supreme Court in the case of Anthony Vs. K. C. Ittoop & Sons and Ors., reported in (2000) 6 SCC 394, has held in paragraph nos. 8 to 11 as under:

“8. The lease deed relied on by the plaintiff was intended to be operative for a period of five years. It is an unregistered instrument. Hence such an instrument cannot create a lease on account of three pronged statutory inhibitions. The first interdict is contained in the first paragraph of Section 107 of the Transfer of Property Act, 1882 (for short the TP Act) which reads thus:

“107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent, can be made only by a registered instrument.” (emphasis supplied)

9. The second inhibition can be discerned from Section 17(1) of the Registration Act 1908 and it reads thus: (only the material portion)

“17. Documents of which registration is compulsory. -(1) the following documents shall be registered if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

*(a) – (c) ******

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.”

10. The third interdict is contained in Section 49 of the Registration Act which speaks about the fatal consequence of non-compliance of Section 17 thereof. Section 49 reads thus:

“49. Effect of non-registration of documents required to be registered.- No document required by Section 17 or by any provision of the TP Act, 1882, to be registered shall

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act, or the

Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

No endeavour was made by the counsel to obviate the said interdict with the help of the exemptions contained in the proviso.

11. *The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that appellant is a lessee by virtue of the said instrument. The court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Smt. Shantabai vs. State of Bombay: AIR 1958 SC 532; Satish Chand Makhan vs. Govardhan Das Byas, (1984) 1 SCC 369 and Bajaj Auto Limited vs. Behari Lal Kohli AIR 1989 SC 1806.)"*

5. The Supreme Court has held that where the relief has been sought on the basis of a written lease deed, benefit thereunder cannot be taken in absence of registration of the lease deed in the cases covered under Section 107 of the Transfer of Property Act, 1882 read with Section 17(1) and 49 of the Registration Act, 1908.

6. The defendant's counter claim is based on the lease deed Exh.-41, which is an unregistered document and, therefore,

the Courts below ought not to have relied on it. In fact neither the Court nor the parties have referred to the aforesaid important provision of law while placing reliance upon the lease deed. The courts below were thus not justified in decreeing the counter claim of the respondent and thereby restraining the appellant from obstructing the alleged peaceful possession of the defendant on the basis of the lease deed moreso when the courts below have recorded a clear finding of the fact that the appellant is the owner of the suit property. First substantial question of law, thus, is answered in the affirmative.

7. It is pertinent to note that the trial Court has held that the appellant-plaintiff is owner and possessor of the suit field. Thus, the appellant-plaintiff's possession is said to have been proved. Despite this finding, courts below have recognized the possession of the respondent-defendant on the basis of the lease deed, which was inadmissible in evidence.

8. In view of above and having answered the first substantial question of law in the affirmative, the second substantial question of law would lose its significance and need not be answered separately. The findings rendered by both courts below having been found unsustainable, the second appeal deserves to be allowed. Hence, following order is passed.

ORDER

- (i) The appeal is allowed.
- (ii) Judgment and order dated 18.12.2006 passed by District Judge – 1, Pusad in Regular Civil Appeal No. 1/2005 and judgment and decree dated 15.12.2004 passed by Civil Judge Junior Division, Mahagaon, in Regular Civil Suit No.25/2004, are set aside. Counter claim of the defendant is dismissed.
- (iii) Regular Civil Suit No.25/2004 is decreed.
- (iv) The respondent-defendant is restrained from obstructing the plaintiff's peaceful possession, enjoyment and vahivat over the suit field.

No order as to costs.

(Anil L. Pansare, J.)

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