



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

SECOND APPEAL NO. 196 OF 2022

APPELLANTS :

(Ori. plaintiff)

1. Sadiq Shaikh Khalik Shaikh,
Aged about 35 years,
Occu : Business, R/o Darwaha,
Tq. Darwaha, Distt. Yavatmal.
2. Nasirkhan Maheboob Khan,
Aged about 41 years,
Occu : Business, R/o Darwaha,
Tq. Darwaha, Distt. Yavatmal.

VERSUS

RESPONDENTS :

(Ori. Defendants)

1. Rajkumar Mallikarjun Khandade,
Aged about 52 years,
Occu : Business.
2. Dinesh Sugandh Kothari,
Aged about 62 years,
Occu : Business
3. Both R/o Main Line Darwaha,
Tq. Darwaha, Distt. Yavatmal.

Shri Anand Deshpande, Advocate for appellants.

Shri A. V. Bhide, Advocate for respondent No.2.

CORAM:- SANJAY A. DESHMUKH, J.

DATED : 15/10/2024.

ORAL JUDGMENT :

1. This appeal is preferred against the Judgment and Decree passed by the learned District Judge, Darwaha in Regular

Civil Appeal No.24/2015 dated 01/01/2019. That First Regular Civil Appeal was preferred against the Judgment and Decree passed by the learned 2nd Joint Civil Judge, Junior Division, Darwaha by common Judgment in Regular Civil Suit Nos.40/2011 and 42/2011 dated 05/08/2015. One more suit bearing Regular Civil Suit No.44/2011 was also decided by the same Court filed by the appellants. However, against that Judgment and Decree, appeal was not preferred by the appellants.

2. The brief facts of the appellants' case are that the appellants have filed suit against the respondent No.1 and 2 regarding suit property bearing Survey No.144/2 admeasuring 55 R land situated at Darwaha, Tah. Darwaha, Dist. Yavatmal for perpetual injunction.

3. The appellants contended in that suit that the respondent No.1 has constructed 15 shops with tin sheets in the suit property. The appellants are licensee of respondent No.1. He executed leave and licence agreement in their favour. They are in possession of the suit property.

4. The respondent No.1 supported the plaintiffs.

5. The respondent No.2 contended that he purchased the suit property by sale deed dated 16/04/1990 from Mallikarjun Ambadas Khandade, the father of respondent No.1. He is in possession of it.

6. Learned Trial Court held that respondent No.2 i.e. defendant No.2 is owner and he is in possession of the suit property as per the sale deed. The suit was dismissed. The Regular Civil Appeal No.24/2015 was preferred by the appellants which was also dismissed by holding that the appellants are not in possession of the suit property.

7. During argument, learned advocate for the appellants submitted that the appellants are in possession of suit property as licensee as per the leave and licence agreement executed by respondent No.1 in favour of appellants. They are in possession of the suit property. Both the Courts erred while deciding suit and appeal.

8. Learned advocate for the appellants submitted that as per the leave and licence (Exh.25), the appellants are in possession of the suit property. They are carrying out their businesses in it. He, therefore, submitted to form the substantial

questions of law that as to whether the learned Trial Court and First Appellate Court were legal and correct in not believing the leave and licence (Exh.25) executed in favour of the appellants by respondent No.2.

9. Learned advocate for the respondent No.2 submitted that there is chequered history of the litigation about the disputed property. He pointed out the Judgment of the learned District Judge, Darwaha, Dist. Yavatmal in Regular Civil Appeal No.11/2011 dated 24/09/2019. It was preferred by the father of respondent No.1 against respondent No.2. He pointed out that in that Judgment, it was held that there is legal possession of Mahavir Enterprises i.e. present respondent No.2 over the suit property and he is owner of it.

10. Learned advocate for the respondent No.2 strongly opposed to form said substantial question of law. He submitted that no substantial question of law arises for determination of decision of this appeal as per the chequered history of the litigations which are decided in favour of the respondent No.2. His title and legal possession over suit property is established.

11. Perused the impugned Judgments and Decrees of the Trial Court as well as First Appellate Court and the copy of

Judgment submitted today in this appeal by learned advocate for the respondent No.2 delivered in Regular Civil Appeal No.11/2011. All these Judgments and Decrees show that the respondent No.2 had purchased the suit property from the father of the respondent No.1. The said sale deed is not set aside by any Court. Thus, the title of the suit property is established from the sale deed executed by father of respondent No.1 in favour of respondent No.2 as per Section 54 of the Transfer of Property Act, 1882.

12. As per Section 110 of the Indian Evidence Act, 1872, title follows possession. Once the respondent No.2 has established his title over the suit property, his legal possession over the suit property must be deemed to be established. There is no any legal right to the appellants regarding the suit property as per their leave and licence agreement Exh.25. There is absolutely no substance in this appeal and grounds raised in this appeal. No any substantial question of law arises for decision by this Court as the respondent No.1 has no legal right to execute leave and licence of the suit property in favour of appellants in view of the principle of *Nemo dat quod non habet* i.e. "no one can convey a better title than what he had" which is laid down in case of **Lachman Dass Vrs. Jagatram and others, (2007) 10 Supreme Court Cases 448.**

13. For the reasons stated above, no interference is warranted in the Judgments of the Trial Court as well as First Appellate Court. Therefore, argument of learned advocate for the appellants is not acceptable in this regard. The appeal, therefore, deserves to be dismissed. The appeal is dismissed. No costs.

[SANJAY A. DESHMUKH, J.]