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

**WRIT PETITION NO. 3357 OF 2019**

**(Dr. Milind Pandharinath Jiwane Vs. Savitribai Nanaji Sontakke (deceased) through LRs & Ors.)**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

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Shri S.S. Deshpande, Counsel for the petitioner.  
Shri Firdos Mirza, Senior Counsel with Shri Abdul  
Subhan, Counsel for the respondents.

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**CORAM : ANIL L. PANSARE, J.**  
**OCTOBER 9, 2024**

The petitioner is aggrieved by the judgment dated 15/3/2019 passed by the Adhoc Additional District Judge, Nagpur, in Regular Civil Appeal No. 273/2017, by which, the judgment dated 20/3/2017 passed by the Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 426/2012, has been upset.

2] The respondents' predecessor, namely, Savitribai Sontakke, had filed a suit against the petitioner for recovery of arrears of rent and possession of suit premises, viz., Nazul Plot No. 584, Municipal House No. 494, Ward No. 54, Lashkaribag, Nagpur – 17. The respondents herein shall be referred to as 'landlord'.

3] According to the landlord, the trial Court took a view that the facts of the case are such that it would require to examine the issue of ownership of the landlord, though incidentally. The trial Court was of the view that the suit has been filed assuming relationship of landlord-tenant. The trial Court then held that the

landlord failed to place on record documents of ownership.

4] The First Appellate Court reversed the finding. According to the First Appellate Court, the trial Court committed perversity in going into the issue of ownership. The First Appellate Court referred to Section 116 of the Indian Evidence Act, 1872, which reads thus :

*“116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”*

The First Appellate Court further noted that denial of title by the tenant itself constitutes a good ground for eviction, if it is not *bona fide*. The First Appellate Court, in support of such finding, has examined the evidence and found it sufficient to prove relationship of landlord-tenant between the parties.

5] Having heard both sides and having gone through the record, the moot question that requires answer is whether the trial Court could have touched the issue of ownership.

6] Shri Firdos Mirza, learned Senior Counsel for the respondents, has placed reliance upon the judgment of the Hon’ble Supreme Court in the case of *Dr. Ranbir Singh Vs. Asharfi Lal [(1995) 6 SCC 580]* to

submit that scope to examine ownership is extremely limited. The Supreme Court, on this point, in paragraph 9 of the said judgment, has held thus :

*“9. It may be pointed out that it is well-settled law that the question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In L.I.C. v. India Automobiles & Co. [1990 (4) SCC 286] this Court had an occasion to deal with similar controversy. In the said decision this Court observed that in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bonafide the Court may have to go into tenant contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bonafide in the circumstances of the case.”*

7] Thus, in a suit for eviction, based on relationship of landlord-tenant, the Court has to decide

whether the defendant is the tenant of the plaintiff or not, though the question of title, if disputed, may incidentally be gone into, in connection with the primary question of relationship between the litigating parties.

8] In the present case, the petitioner had filed application (Exh. 44) calling upon the landlord to file original documents, namely, sale-deed or lease-deed of the suit property or sanctioned map, to test her ownership. The trial Court rejected the said application on the ground that if the landlord-tenant relationship is established, the title documents may not be gone into. The trial Court further noted that if required, and after completion of evidence, the documents may be called.

9] This order was tested by the petitioner in revision, but in vain. Thus, the said order has attained finality. Thus, the landlord was relieved from filing documents of title.

10] The question now remains is whether the landlord has proved relationship of landlord-tenant.

11] The landlord has placed on record the statement made by the petitioner before the Police in connection with obtaining license for 'Samta Sainik Dal' run by him from the suit property. PW/3 – Anil is a Police Officer, who has made enquiry in this regard and recorded statement of the petitioner. The petitioner, in his statement before police, has in an unequivocal terms stated that he is residing at the suit premises as a tenant.

12] In cross-examination, the witness has deposed that he has mentioned address of the petitioner as per his say and narration. A case was, then, put-up by

the petitioner that the witness has only obtained his signature, which the witness denied. Thus, in a way, making statement by the petitioner is not disputed. This statement (Exh. 69) is petitioner's own admission that he is the tenant of the landlord. The admission is significant because it is made in natural course in an enquiry relating to petitioner's license to carry business from the suit property.

13] In addition to above, the Tax Inspector of the Nagpur Municipal Corporation has assessed the tax and while doing so, has found that the petitioner is occupying certain area as a tenant in the suit property owned by the landlord. There is nothing in the cross-examination to doubt the said version.

14] The landlord has also examined one Shri Abhay Patil, the other tenant. He has deposed that the petitioner is running security services in the name and style as 'Samta Sainik Dal' as a tenant of the landlord.

15] In cross-examination, the petitioner has brought on record that the tenancy agreement between the witness and landlord has been registered. The same, however, has been not placed on record. The petitioner has however, not called upon the witness to produce the said document. Thus, the petitioner himself has ratified that the witness was tenant of the landlord and the agreement of tenancy has been registered.

16] In further cross-examination, the petitioner referred to yet another agreement, which is executed by the witness with one Shri Rahate. The said agreement has been also not produced on record. This agreement is not

connected with the dispute and thus has no consequences. Surprisingly, the petitioner has not even put-up a case that he is not the tenant of the landlord, as deposed by the witness.

17] Thus, the aforesaid evidence, coupled with the revenue entries and notices issued by the Corporation Office describing the petitioner as occupant of the property owned by the landlord, is found by the First Appellate Court to be sufficient evidence to establish the relationship of landlord-tenant. This finding appears to me to be based on the evidence. In any case, the finding cannot be said to be perverse.

18] The learned Counsel for the petitioner, however, argued that he has set-up a case, through written statement, that his father has made construction upon the Nazul land, which can be said to be an encroachment. The petitioner has disputed the landlord's ownership over the suit property. According to him, the trial Court has rightly gone into the incidental issue of ownership. The landlord having failed to establish ownership, there arises no question of there being relationship of landlord-tenant. He has referred to the judgment passed by a Co-ordinate Bench of this Court in the case of *Orbit Super Market Private Limited & Anr. Vs. Smt. Mukta Arvind Bobde & Ors.* [2020(7) ALL MR 411], wherein the Court, by referring to the judgments of the Supreme Court, noted that while deciding the main issue pertaining to grant of eviction decree, the Small Causes Court could certainly go into the incidental question of

title while deciding the question of entitlement of landlord to evict the tenant.

19] The law is well settled on this point. The Small Causes Court can certainly go into the incidental question of title, however, the same will be permissible if the evidence, as regards relationship of landlord tenancy, is weak or if there is serious dispute of ownership.

20] In the present case, the petitioner, though pleaded that his father has constructed the structure on the Nazul land and has, thus, made encroachment, he did not even enter witness box to make an attempt to prove his stand. Having not done so, he has withheld best evidence and should, thus, suffer consequences thereof. On the contrary, the landlord has, by cogent evidence, established relationship of landlord tenancy. Further, the landlord was relieved from filing documents of title. Additionally, the provision under Section 116 of the Evidence Act is also relevant.

21] In the circumstances, in my considered view, the First Appellate Court has rightly held that the trial Court ought not to have delved upon the issue of ownership of landlord.

22] There is, thus, no merit in the petition. The same is accordingly dismissed.

**(ANIL L. PANSARE, J.)**

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