



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

SECOND APPEAL NO.232 OF 2023

Ashabai Naresh Punvatkar
Age 60 years, Occ:House Work
R/o House No.20, Ward No.62,
Near Homeopathic Hospital, Amravati,
Tahsil and Dist. Amravati.

...APPELLANT

(Orig. Deft.in Sp.C.S.266/2007 &
Original appellant in R.A. No.162/2017
in RA)

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

1. Harish Ramrao Naraskar
Aged 73 years, Occ: Pensioner,
R/o Jai Durga Housing Society,
Infront of Gajanan Maharaj Mandir
Jagtap Mala, Nashik Road,
Nashik, Tahsil and Dist. Nashik.

(Orig. Plaintiff in Sp.C.S.266/2007 &
Original Resp. in R.A. No.162/2017
in RA)

2. State of Maharashtra,
Through Collector, Amravati.

...RESPONDENTS

Mr. M.R. Joharapurkar, Advocate for appellant.
Mr. Uday Gosai, Advocate for respondent no.1.
Ms M.R. Kavimandan, AGP for respondent no.2.

CORAM :- M.W. CHANDWANI, J.

DATE :- 15.10.2024.

ORAL JUDGMENT:

1. Correctness of the judgment and decree dated 14.09.2009
passed by the learned Civil Judge, Senior Division, Amravati in
Special Civil Suit No.266/2007, thereby decreeing the suit of the

respondent is under challenge. The appellant also questions the judgment and decree dated 10.04.2023 passed by the learned District Judge-4, Amravati in Civil Appeal no.162/2017, thereby partly allowing the appeal filed by the appellant on the ground that the appeal ought to have been allowed in toto.

2. This second appeal by order dated 17.02.2024 came to be admitted on the following substantial question of law:

“Once the possession of the defendant is denied to be of a trespasser, considering the transaction between the parties, the defendant could at the most be said to be in permissive possession of the suit premises meaning thereby that she possessed the suit premises as gratuitous licensee and, therefore, whether Civil Court will a jurisdiction to try and decide the suit for her eviction?”

3. Mr. Joharapurkar, learned counsel appearing on behalf of the appellant, submitted that respondent no.1, who is the original plaintiff, had filed a suit for possession against the appellant alleging that the appellant was allowed to reside in the suit property alongwith the mother of respondent no.1/original plaintiff and handed over vacant possession to her. Thereafter, the appellant again entered in the suit premises and thereby encroached the suit property. Accordingly, the trial Court framed

the issue whether the appellant is in illegal possession of the suit property. The finding of the trial Court that respondent no.1 failed to prove that the appellant is an encroacher was maintained till first appeal. In spite of this aspect, the suit came to be allowed by holding that the appellant is in permissive possession of the suit property. Taking his argument further, the learned counsel for the appellant vehemently submitted that, if the appellant was in permissive possession it means that she was a gratuitous licensee. Relying on the judgment of *Prabhudas Damodar Kotecha & Ors Vs. Manhabala Jeram Damodar & Anr.*¹, wherein it has been held that even a suit for eviction against gratuitous licensee lies before the Small Causes Court. Respondent no.1 ought to have filed the suit before the Small Causes Court and in that scenario the civil Court does not have jurisdiction. According to him, the suit has been decreed by the Civil Judge, Senior Division, Amravati, a civil Court. Therefore, the decree is passed without any jurisdiction and is nullity. Hence, the findings recorded by the trial Court as well as the appellate Court do not sustain.

4. Conversely, Mr. Gosavi, learned counsel appearing on behalf of respondent no.1, vehemently submitted that the suit against the licensee can be filed in civil Court where the Small Causes Court

¹ 2013 (15) SCC 358; AIR 2013 SC 2959

has not been established. The jurisdiction of the Small Causes Court has been vested in wake of the Provincial Small Cause Courts Act, 1887 (for short, “Act of 1887”). Section 5 deals with establishment of the Court of Small Causes, which reads thus:

“5. Establishment of Courts of Small Causes.—

(1) The State Government may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the State Government may define, and the Court may be held at such place or places within those limits as the State Government may appoint.”.

5. Section 16 contemplates the bar to take cognizance of any matter cognizable by the Court of Small Causes by any other Court having jurisdiction within local limits of jurisdiction of Small Causes by which the suit is triable. Section 16 is reproduced as under:

“16. Exclusive jurisdiction of Courts of Small Causes.—

Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.”

6. Thus, what is deduced from Sections 5 and 16 is that wherever Small Causes Courts are established by virtue of the Act of 1887, the civil Court shall not have any jurisdiction to take cognizance of the suit which is cognizable by the Court of Small Causes within the local limit of jurisdiction of Small Causes Court. There is no dispute that Small Causes Court is not established within Amravati district, within whose jurisdiction the cause of action arose. In absence of establishment of Small Causes Court in Amravati district, obviously, it is the civil Court which shall try a suit between the licensor and licensee. Therefore, I find substance in the argument of learned counsel for respondent no.1. No substantial question of law arises in this appeal. Accordingly, the appeal fails and consequently it is **dismissed**.

JUDGE

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