



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

APPLICATION NO. 1112/2023 IN SECOND APPEAL ST.NO.16821/2023

Rukmini Rammanohar Shahu thr LR's and Ors. .VS. Ramgopal Bandadin Gupta
thr. LR's. and Ors.

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

Court's or Judge's orders

Mr. D. N. Mehta, Advocate for applicants.
Mr. S. S. Sitani, Advocate for non applicant no.1.

CORAM : ANIL L. PANSARE, J.
DATE : 13.02.2024

Learned counsel for the applicants states that in compliance to order dated 30.01.2024, he has filed documents with the registry. However, the documents are not on record.

Registry to verify and file report.

(Anil L. Pansare, J.)

Washik

Later on:

Registry has filed report that the learned advocate has filed Civil Application No.211/2024 for permission to take documents on record. The application is filed through e-filing on 12.02.2024 at about 6.57 p.m. at the time when the board was already punished. Thus, no fault is attributable to the registry. In fact, the counsel himself ought to have disclosed correct status.

2. Heard. Perused applications. According to learned counsel for the applicant, the delay in filing the second appeal has occurred because the advocate appearing before the appellate court faced certain difficulties. His office was sealed by the Indian Overseas Bank on 20.03.2023. He was required to move before the Commissioner of Police as also this court to get access to his office. The order to that effect was passed by this Court on 19.04.2023. The learned counsel submits that the order was complied on 02.06.2023. He, accordingly, prayed to condone the delay.

3. In view of above and for the reasons set out in the application, the application is allowed. The second appeal be registered and proceed in accordance with the rules.

Second Appeal St. No. 16821/2023

Heard.

2. One Damayantibai Gupta – respondent no.2, was owner of the house property no.422, situated in Ward No. 35, Hansapuri, Nagpur. She executed an agreement to sell the said property to one Ramgopal Gupta – respondent no.1, on 07.01.1983. One Rukhminibai Sahu – appellant no.1, was occupying the part of the premises as a tenant.

3. On 03.12.2003, Ramgopal filed a suit bearing Regular Civil Suit No.1663/2003, for specific performance of contract against Damayantibai Gupta as also Rukhminibai. On 12.12.2003 i.e. immediately after lodging the suit, Damayantibai executed sale deed in favour of Rukhminibai of the portion that was in Rukhminibai's possession. This fact

was disclosed in the written statement filled by Rukhminibai. Ramgopal, therefore, sought amendment in the plaint with a prayer to declare the sale deed executed between Damayantibai and Rukhminibai as null and void. The plaint was accordingly amended.

4. The trial court vide judgment dated 30.07.2012, decreed the suit. The trial court declared that the sale deed executed between Damayantibai and Rukhminibai is null and void. The specific performance of contract between Ramgopal and Damayantibai was granted. Both, Damayantibai and Rukhminibai were directed to hand over possession of the suit property to Ramgopal. This finding was unsuccessfully challenged in Regular Civil Appeal No. 975/2012 as also in Second Appeal No. 51/2016, as also before the Supreme Court in Special Leave Petition No.32171/2018. The Supreme Court, while dismissing the special leave petition, observed as under:

“We do not find any infirmity in the impugned judgment. We, however, make it clear that the decree passed in these proceedings is for specific performance.

If the petitioner has any right as a tenant she can always enforce those rights.

The Special Leave Petition is, accordingly, dismissed.

Pending applications, if any, stand disposed of.”

5. Taking advantage of the statement in the order that, *“If the petitioner has any right as a tenant she can always enforce those rights.”*, Rukhminibai raised objection before the executing court in Regular Darkhast No. 1419/2012, stating therein that the sale deed between Damayantibai and Rukhminibai having been annulled, Rukhminibai's right as a

tenant would revive and unless the tenancy is surrendered, she cannot be evicted without following due process of law. The executing court found substance and accordingly allowed the objection. Ramgopal carried the matter before the first appellate court. The first appellate court held that the date on which the sale deed was executed between Damayantibai and Rukhminibai, the tenancy rights were terminated. The first appellate court accordingly set aside the order passed by the trial court. This judgment is under challenge.

6. Learned counsel for the respondent has invited my attention to the relevant finding recorded by the first appellate court. The first appellate court, has taken aid of the judgment of the Apex Court in the case of *R. Kanthimathi and Ors. Vs. Beatrice Xavier*, reported in *AIR 2003 SC 4149*, held that once there is an agreement to sell the tenanted property between landlord and tenant, the old relationship as such comes to an end. The court held that any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to limitations under the law.

7. As against, learned counsel for the appellant has relied upon judgment of the apex court in the case of *H. K. Sharma Vs. Ram Lal*, reported in *(2019) 4 SCC 153*. The question that fell for consideration was when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in

relation to the leased property. The court held that this question has to be decided keeping in view the provisions of section 111 of the Transfer of Property Act and the intention of the parties to the lease. The apex court, considering the facts of the case, held that the law laid down in the case of *R. Kanthimathi* (supra), has no application because the facts of the case are distinguishable.

8. What emerges from the above referred judgments is that merely on execution of the agreement to sell the tenanted property, the jural relationship of lessor and lessee will not automatically terminate but will depend upon the intention of the parties, that is to say, whether the parties intended to surrender the lease on execution of such agreement or they intended to keep the lease subsisting notwithstanding the execution of such agreement.

9. In the present case, the question of intention of the parties does not arise at all, inasmuch as the parties herein that is Damayantibai - the landlord and Rukhminibai - the tenant have executed the sale deed of the tenanted portion, meaning thereby that Damayantibai became owner and thus ceased to be tenant of the property. This means that tenancy between the parties has been terminated.

10. The question that arises for consideration is whether upon declaring the aforesaid sale deed as null and void, will tenancy right revive? The answer would be certainly in the negative. The sale deed was executed in December, 2003. Rukhminibai, pending lis, has made an attempt to change the status of the property. She chose to become owner of the

property and thus the jural relationship of lessor and lessee came to an end. Merely because her ownership was subsequently found and declared as illegal, the relationship of lessor and lessee will not revive. It is nobody's case, as it cannot be, that after becoming owner of the property, the relationship of lessor and lessee continued.

11. In any case, once Rukhminibai claimed herself to be the owner of the tenanted property, the tenancy stood terminated, which status continued till today. It will be, therefore, not open to Rukhminibai to now deprive Ramgopal of the fruits of the decree by raising an imaginary plea of revival of the tenancy.

12. At this stage, counsel for the appellant seeks time to better prepare a case and make further submission.

13. Time granted, however, for the reasons stated above, I am not inclined to continue order of status quo passed by this court. Thus, interim relief is vacated.

14. Stand over to 05.03.2024 for further consideration.

(Anil L. Pansare, J.)