



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 548 OF 2000
WITH
CIVIL APPLICATION NO. 6727 OF 2005
IN SA/548/2000

Balkrishan S/o Yadavrao Auti,
Died L.Rs.

1. Shashikala w/o Balkrishna Auti,
Age 55 years, Occu: Agril.
2. Madan s/o Balkrishna Auti,
Age Major, Occu: Service and
Agriculture.
3. Ram s/o Balkrishna Auti,
Age Major, Occu : Agriculture,

All R/o : Tembhurni, Tq :
Jafrabad, Dist : Jalna.

4. Mangalbai w/o Kailas Bhawar,
Age Major, Occu : Household,
R/o : Sillod near Ajintha Road,
Sillod, Tq : Sillod, Dist :
Aurangabad.
5. Sunanda w/o Dadarao Shete,
Age Major, Occu : Household,
R/o : Hasnabad, Tq : Bhokardan,
Dist : Jalna.

... APPELLANTS
(Orig. Plaintiff)

VERSUS

Nandlal s/o Eknath Kabra,
Age 35 years, Occu : Agril,
and Business R/o :
Tembhurni, Tq : Jafrabad,
Dist : Jalna.

... RESPONDENTS
(Orig. Defendant)

...
Mrs. M. A. Kulkarni, Advocate for the Appellants
...

CORUM : ROHIT W. JOSHI, J.

DATE : 12th MARCH, 2025

J U D G M E N T :

1. The appellant in the present appeal is the original plaintiff. He had filed a suit for eviction and recovery of rent against the respondent being Regular Civil Suit No. 27 of 1989. It is his contention that in the civil suit that the respondent was monthly tenant for rent of Rs. 150/-. As against this, the case of the respondent is that he was in possession of the property on the basis of an agreement dated 07.03.1977. After framing issues in the light of rival pleadings the learned Trial Court recorded evidence of parties and after hearing respective arguments the learned Trial Court was pleased to dismiss the suit with respect to prayer for eviction, however, the suit was decreed with respect to prayer for recovery of rent by passing a decree for recovery of rent of Rs. 4500/- for the period commencing from 01.09.1981 up to 28.02.1984.

2. The plaintiff did not file any appeal against dismissal of the suit with respect to prayer for possession. On the other hand, the defendant-respondent filed Regular Civil Appeal No. 27 of 1991 challenging the decree for recovery of rent, which was passed against him. The learned First Appellate Court has recorded that the respondent-defendant could not prove his defence of being in possession of the suit property on the basis of agreement dated 07.03.1977 as alleged by him. However, the

learned First Appellate Court has also recorded that the appellant-plaintiff also could not prove case of oral tenancy set up by him and further that the agreed rent was Rs. 150/- per month.

3. In that view of the matter, the learned First Appellate Court was pleased to allow the appeal filed by the respondent-defendant thereby quashing and setting aside the decree for recovery of rent passed by the learned Trial Court. The suit property is located within limits of the Gram Panchayat. The provisions of the erstwhile Hyderabad Rent Control Act are therefore, not applicable to the suit property. Likewise, provisions of the Provincial Small Causes Act are also not applicable.

4. Aggrieved by the judgment and decree passed by the learned First Appellate Court, the appellant-plaintiff has filed the present Second Appeal which was admitted vide order dated 05.03.2004 on the following substantial question of law.

“Whether the findings of the lower Appellate Court that the plaintiff could not establish the relationship of landlord and tenant between the parties on the basis of the depositions of P.W.1 and P.W.2 are perverse or contrary to the evidence on record.”

5. Heard Mrs. M. A. Kulkarni, learned advocate for the appellants. The respondent though duly served has not entered appearance. I have

perused the pleadings and oral evidence led by respective parties. I have also perused the judgments delivered by the learned Courts. Perusal of findings recorded by the learned Trial Court will indicate that the learned Trial Court was impressed with a suggestion that was given in the cross examination of the appellant-plaintiff, which was to the effect that if the respondent-defendant was ready to pay the rent will the appellant-plaintiff accept the same. On the basis of this suggestion coupled with the fact that the respondent-defendant could not prove the alleged agreement dated 07.03.1977, the learned Trial Court came to a conclusion that the respondent-defendant was in occupation of the suit property as a tenant of the appellant-plaintiff. In that view of the matter learned Trial Court passed decree for recovery of rent against the respondent-defendant. It needs to be mentioned that it was the case of respondent-defendant that he had never paid the rent and therefore, the learned Trial Court granted decree for a period of three years preceding date of filing of suit.

6. The learned First Appellate Court has reversed the finding. The learned First Appellate Court has observed that admittedly case of appellant-plaintiff was one of oral tenancy. The learned First Appellate Court has held that the pleadings and evidence of the appellant-plaintiff was lacking in material particulars with respect to the terms and conditions of alleged oral tenancy as also the mode and manner in which

the parties had arrived at the terms of oral tenancy. The learned First Appellate Court has observed that although it was a case of appellant-plaintiff that the tenancy had commenced in the year 1981, he had altered his version in the cross examination to contend that the tenancy had commenced from the year 1978. The fact that no documentary evidence such as rent receipt, etc. was produced on record has also weighed with the learned First Appellate Court. I find that the findings recorded by the learned First Appellate Court are plausible. The learned First Appellate Court has considered the evidence along with the pleadings and has arrived definite findings of facts which cannot be termed to be perverse. Having regard to the limited scope of Second Appeal, it does not permit re-appreciation of evidence and interference is permissible only if the findings are perverse. I have already observed that the findings cannot be said to be perverse. In that view of the matter, I am inclined to decide the substantial question of law against the appellant and in favour of the respondent. The Second Appeal is therefore, dismissed with no order as to costs.

7. Rule stands discharged accordingly.

[ROHIT W. JOSHI]
JUDGE

KS_Kamble/