



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 390 OF 1994

Azimbee Karimbaksh (l.rs.) Zubedabee And Others.

VERSUS

Hamidkhan Yusuf Khan.

Mr. A. H. Kasliwal, Advocate for Appellants

Mr. Mujtaba Gulam Mustafa, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 13th February, 2025

PER COURT :-

1. This appeal under Section 100 of the Code of Civil Procedure takes exception to the concurrent judgments and decree passed by the Trial Court in Small Cause Suit No. 87/1980, dated 03.05.1986 and confirmation thereof by the First Appellate Court in Regular Civil Appeal No. 128/1979.

2. Parties are referred to as "plaintiff" and "defendants" for the sake of convenience.

3. Plaintiff filed suit for recovery of sum of Rs. 560/- towards arrears of rent against defendant. It is the claim of the plaintiff that the suit house was let out on rent of Rs. 20/- per month. There is averment in the plaint that the defendant was in arrears of the rent for the period from 01.12.1977 to 31.03.1980 and hence notice was issued for payment of the same. Since, the amount of rent in arrears was not paid by the defendants to the plaintiff, suit came to filed.

4. Defendants filed written statement opposing the contention of plaintiff. According to defendant, the rent of the suit property is not Rs. 20/- but Rs. 02/-. He also claimed that the owner had agreed to effect the sale of suit property to the defendant. There is, however, no dispute made with regard to the fact that in spite of such claim, the defendant continued to remain as a tenant and continued to pay rent to the landlord.

5. After framing of the issues, both parties led evidence.

6. Learned Trial Court accepted the evidence of plaintiff over the documents led by the defendants. On the basis of evidence led , it is held that the rent of the suit property was Rs. 20/- per month and since the defendants were in arrears thereto, decree came to be passed.

7. Learned First Appellate Court has also considered any material evidence on record and findings rendered while passing impugned judgment dated 21.02.1994 in Regular Civil Appeal No. 128/1979.

8. Heard learned counsel for both sides.

9. It is settled position of law that in the second appeal unless substantial question of law is involved, such appeal cannot be entertained. It is not permissible for this Court to re-appreciate evidence as could be done by First Appellate Court and record findings of fact afresh.

10. Here, in this case, there is no dispute about the fact that the

plaintiff should be landlord and the defendants are tenants thereof. Though, it is claimed by the defendants that the owner had agreed to sale the suit house to the defendants, there is no counter claim filed by the defendants to seek any relief in that regard. Admittedly, no suit for specific performance of contract is filed by defendants. Thus, there is no reason to believe that the relationship of landlord and tenant between plaintiff and defendants got served. As such, it was obligation of defendants to pay rent to the plaintiff.

11. Both Courts below have considered the evidence led by the parties and recorded the finding of fact that the suit house was let out for a rent of Rs. 20/- as claimed by the plaintiff. The findings recorded by the Courts below are in consonance with the evidence on record and this Court finds no perversity therein.

12. As a result of the above discussion, since there does not involve any substantial question of law in this appeal, it must fail. Hence, appeal stands dismissed.

(R. M. JOSHI, J.)

bsj