



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.49 OF 2019
WITH
CIVIL APPLICATION NO.1839 OF 2019
IN SA/49/2019

Shivajirao s/o Arjunrao Dagade Patil,
Age : 50 Years, Occu. : Medical practice,
R/o Dnyaneshwarnagar, Behind Wamanagar,
Purna, Nanded, Tq. & District Nanded. ... **Appellant.**

Versus

Subhas s/o Arjunrao Dagade Patil,
Age : 60 Years, Occu. : Pensioner,
R/o Ganeshnagar, Ausa Road, Latur,
Tq. & District Latur. ... **Respondent.**

...
Advocate for Appellant : Mr. Arvind Deshmukh.
Advocate for Respondent : Mr. Milind M. Patil (Beedkar).
...

CORAM : SHAILESH P. BRAHME, J.
DATE : 18.07.2025

JUDGMENT :-

1. Heard both sides.
2. Being aggrieved by judgment and decree of possession passed by Joint Civil Judge Senior Division, Nanded in Special Civil Suit No.44 of 2009, dated 24.06.2013 which is confirmed by District Judge, Nanded in Regular Civil Appeal No.102 of 2013 vide judgment and decree dated 19.10.2018, the

defendant is before this Court in this second appeal. Parties to the suit are real brother.

3. Respondent filed suit for possession contending that he is the owner of house constructed over plot Nos.61 and 62, Survey No.6/B at Dnyaneshwar Nagar, Nanded. He was having a transferable job in Irrigation Department. He purchased a plot by sale deed dated 28.12.1987. He obtained permission for construction of house on 27.02.1989. He secured loan from HDFC Bank and made construction of house. It is his self acquired property purchased and constructed from his own funds. Appellant is brother and was in need of accommodation. Hence, he was inducted in the suit house. After the retirement of the respondent, appellant refused to vacate the premises. Hence, the suit was required to be filed.

4. Appellant contested suit by contending that it is not self acquired property of the respondent but a joint family property and he is a co-sharer. It was merely purchased in the name of respondent. He also spent for the development of the property. The taxes are paid by him. The joint family is undivided and the respondent was Karta of the family. It is contended that Regular Civil Suit No.685 of 2012 was filed by him for partition.

5. Appellant examined four witnesses. Respondent examined two witnesses. Both the Courts below decided against appellant. Learned counsel Mr. Deshmukh put forth substantial questions of law by submitting that appreciation of oral evidence by Courts below is not logical. Oral evidence of D.W.1 and D.W.2 is discarded for unsustainable reasons. It is submitted that the reasons assigned by Appellate Court in paragraph No.23 is perverse. It is vehemently contended that in fact there is a landlord-tenant relationship which is evident from paragraph No.8 and a notice issued by the respondent terminating the tenancy. It is further submitted that both the Courts below committed patent illegality in decreed the suit.

6. Per contra, learned counsel Mr. Milind Patil-Beedkar repels the submissions of appellant by adverting my attention to specific plea taken by appellant in the written statement that he was claiming to be co-sharer and the property being undivided joint family property. A copy of plaint and order dated 27.06.2023 passed in Regular Civil Suit No.685 of 2012 is tendered on record. Learned counsel has taken me through the findings recorded by the Trial Court and the Appellate Court to buttress that no inference is called for as the findings are reasonable, logical and plausible.

7. Learned counsel Mr. Deshmukh has made attractive submission in respect of plea of tenancy. Neither Trial Court nor Appellate Court framed any issue or point regarding tenancy. A careful perusal of the plaint shows that in paragraph No.8 a stray sentence is made that respondent had decided to lease out the property followed by further pleadings that instead of letting out to outsider, it was decided to permit the appellant to occupy the property. Written statement shows that contents of paragraph No.8 are denied. The suit property is claimed to be joint family property and the parties are co-sharer. In the absence of the required pleadings of tenancy, oral or written agreement of tenancy and any term regarding rent, both the Courts below are justified in not treating the plea pressed into service for the first time in the High Court as a fact in issue.

8. It is not out of context to refer to plaint of Regular Civil Suit No.685 of 2012 filed by the appellant against respondent and other family members for partition. Amongst other properties, present subject matter is also included as undivided joint family property. The suit was dismissed for default vide order dated 27.06.2023. The plaint belies the theory of appellant that he was a tenant. A notice was issued for

evicting him. Thereafter, another notice at Exh.37 was issued by the respondent. Trial Court rightly dealt with the issue that earlier notice of eviction is in consequential, I find no illegality in the said finding. The plea pressed into service by the appellant regarding tenancy sans merit. It cannot constitute any substantial question of law.

9. Both Courts below have considered oral evidence on record. No fault can be found with the findings. There is absolutely no evidence on record to show that suit property is joint family property. The admissions of appellant are glaring and rightly appreciated by Courts below. There is cogent material on record to show that respondent was in service and he had independent source of income. A sale deed dated 28.12.1987 at Exh.46, record of right Exh.19, 20 and 32 indicate exclusive title of the respondent. A construction permission at Exh.21 stands in the name of respondent. A loan agreement at Exh.23 and repayment receipts Exh.24 to 28, 66 to 118, bank statement Exh.119 to 132 unequivocally show that loan was disbursed to the respondent exclusively and he developed his plots. There is other corroborative material on record to indicate self acquired property of the respondent.

10. In view of the above discussion, I find that no substantial question of law is involved in the appeal. Hence, the following order :

ORDER

- (i) Second Appeal is dismissed.
- (ii) Civil Application is disposed of.
- (iii) After pronouncement of the order, learned Counsel for the Appellant prays for continuation of interim relief, stating that he is in possession of the suit house. His client desires to approach the Hon'ble Apex Court.
- (iv) Learned Counsel for the Respondent strongly opposes the request.
- (v) The Respondent is awaiting possession since many years. The possession was initially permissive and the Appellant did not pay anything towards the occupation of the suit house. For adequate period, he enjoyed the possession. Both the Courts below as well as this Court has decided against him. I do not find that this is a fit case to grant any protection or to continue interim relief. The request is rejected.

(SHAILESH P. BRAHME, J.)

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