



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
SECOND APPEAL NO.249 OF 2023

APPELLANT :- Suraj Pardiplal Agnihotri, Aged about
(Ori. Plaintiff)
On R.A. 34 years, Occ. Business, R/o.
Pardesipura, Ramnagar, Wardha, Tah.
& District Wardha.

..VERSUS..

RESPONDENTS :- 1 Ashwin Sunil Pawar, Aged about 40
(Ori. Defendants)
On R.A. years, Occ. Business, R/o. Wanjari
Chowk, Wardha. Tah. & Distt. Wardha.
2 Renuka Ashwin Pawar, Aged about 32
years, Occ. Housewife, R/o. Wanjari
Chowk, Wardha, Tah. and Distt.
Wardha.
3 Sandeep Vitthalrao Gaikwad, Aged
about 40 years, Occ. Business, R/o
Juna Pani, Pipari(Meghe), Wardha,
Tah. & Distt. Wardha.

Mr. M. M. Agnihotri, a/w. Mr. Parth L. Sagdeo, Advocates for Appellant.
Mr. H. D. Dangre, Advocate for the Respondent Nos.1 and 2.
Ms. Anjali Agrawal, Advocate for respondent No.3.

CORAM : **ROHIT W. JOSHI, J.**

RESERVED ON : **04.12.2025**

PRONOUNCED ON : **16.12.2025**

JUDGMENT :

1) Heard finally with the consent of learned Advocates
for the respective parties.

2) Notice in the present second appeal was issued vide

order dated 22.01.2024 on the following substantial question of law:-

“Whether both the Court below have travelled beyond the averments made in the plaint (including the documents annexed with the plaint) while deciding application under Order VII Rule 11 of the Code ?”

3) Subsequently vide order dated 11.03.2024, the following substantial question of law was framed:-

“Whether it was permissible for the courts below to enter into merits of the case while deciding the application under Order VII Rule 11 of the Civil Procedure, 1908?”

4) The present Second appeal arises out of an order of rejection of plaint passed under Order VII Rule 11(a) of the Code of Civil Procedure, 1908. The present appellant had filed a suit, being Regular Civil Suit No.298 of 2022, against the present respondents *inter alia* seeking declaration that the defendants/respondents do not have right to evict the plaintiff from the suit property without following due process of law and for perpetual injunction restraining the defendants from disturbing his peaceful possession over the same.

5) It is the case of the plaintiff that defendant No.3 had borrowed an amount of Rs.30,00,000/- from him and since he was unable to refund the loan amount, he convinced the plaintiff to accept all his office furniture and other accessories in the office in lieu of the loan amount. The office of defendant no.3 was situated in the suit property which was taken by him on rent from defendant no.1. The plaintiff averments indicate that according to plaintiff, there was an agreement between himself, defendant no.1 and defendant no.3 regarding user of suit property i.e. office of defendant no.3.

6) The plaintiff has averred that accordingly agreement dated 15.10.2020 was executed between himself, defendant no.1, defendant no.3 and late Sunil Pawar (father of defendant no.1). The terms of the agreement demonstrate that the plaintiff has agreed to purchase the entire furniture and fixtures belonging to defendant no.3, which were kept in the tenanted premises owned by defendant no.1. The agreement recites that defendant no.1 had agreed to permit the plaintiff to retain the said movables in the tenanted

premises up to 31.12.2020 and further states that the plaintiff was to pay rent at the rate of Rs.10,000/- per month for the same.

7) The plaintiff has averred that he was placed in possession of the suit property. It is alleged that defendant nos.1 and 2 were obstructing the plaintiff from accessing the suit property. The plaintiff claims that defendant no.1 and defendant no.2, who is wife of defendant no.1 were not justified in doing so in view of the legal position that a tenant, or even a trespasser in settled possession, cannot be dispossessed without following due process of law.

8) The defendant Nos.1 and 2 filed application for rejection of plaint under Order VII Rule 11(a) of the CPC *inter alia* contending that the plaintiff was permitted to keep the furniture and fixtures in the suit premises in terms of agreement dated 15.10.2020 up to 01.01.2021 and that after the said date the plaintiff had no right to retain the said movables in the suit property.

9) Defendant nos.1 and 2, therefore, prayed for rejection of plaint on the ground that it did not disclose any

cause of action. The learned Trial Court has allowed the said application vide order dated 23.02.2023.

10) The learned Trial Court has observed that there is no clear pleading in the plaint regarding delivery of possession of the suit premises by the defendant no.1 to the plaintiff or creation of tenancy rights in favour of the plaintiff. It is further observed that there are no clear pleadings regarding payment of rent. It is also observed that in terms of the agreement dated 15.10.2020, plaintiff was permitted to keep the furniture and fixtures in the suit property up to 31.12.2020 on payment of rent @ Rs.10,000/- per month and the plaintiff was bound to remove the entire movables from the suit premises on 01.01.2021. The learned Trial Court has observed that the plaint averments read meaningfully in conjunction with the agreement dated 15.10.2020 will imply that defendant no.1 permitted the plaintiff to keep movables in the suit property only up to 31.12.2020 and the arrangement was a time bound arrangement which was to expire on 01.01.2021. It is observed that the plaintiff was not placed in possession of the

suit property and tenancy rights with respect to the suit property was also not created in his favour.

11) Aggrieved by the said order of rejection of plaint, which is deemed to be a decree, the plaintiff preferred first appeal, being Regular Civil Appeal No.29 of 2023. The learned First Appellate Court has dismissed the appeal. The learned First Appellate Court has observed that defendant No.3/tenant of defendant No.1 was unable to refund loan amount of Rs.30,00,000/- to the plaintiff and therefore, he agreed to transfer his furniture and other movables in the suit property to the plaintiff in lieu of loan amount. The defendant no.1 consented that the suit premises could be utilized for storing the said movables up to 31.12.2010 as per agreement dated 15.10.2020. The learned First Appellate Court has observed that there is no privity of contract between the plaintiff and defendant nos.1 and 2 with respect to premises in question as a consequence of which, tenancy rights are not created in favour of plaintiff. It is observed that at best the agreement dated 15.10.2020 brings about relationship of licensor or licensee and that the licensee is

restricted for enjoyment of property i.e. storage of movables.

It is held that the agreement dated 15.10.2020 does not create any legal right in favour of the plaintiff and that the tenancy of defendant no.3 was not attorned in favour of the plaintiff. Accordingly, the appeal was dismissed.

12) The present Second Appeal is preferred challenging the aforesaid order of rejection of plaint and judgment and decree dismissing the appeal arising therefrom. Since the appeal arises from an order of rejection of plaint passed under Order VII Rule 11(a) of CPC, the plaint averments will have to be taken on their face value. Of course, the plaint averments will have to be read meaningfully alongwith the agreement dated 15.10.2020.

13) Perusal of agreement dated 15.10.2020 will demonstrate that the same is executed between plaintiff, defendant no.1(owner), father of defendant no.1 and defendant no.3(tenant). The agreement indicates that defendant no.1 and his father permitted the plaintiff to retain the movables purchased by him from defendant no.3 in the suit property up to 31.12.2020. It is also apparent that rent

@ of Rs.10,000/- per month was charged for the same.

14) The plaintiff has made a positive statement in paragraph 3 of the plaint that he is in possession of the suit property alongwith furniture and fixtures. He has averred in paragraph no.5 that he cannot be dispossessed from the suit property without following due process of law. The plaintiff has averred that the tenant or even a person in possession cannot be dispossessed without following due process.

15) Perusal of the agreement will indicate that defendant no.1 allowed the plaintiff to keep movables in the suit property for rent payable at the rate of Rs.10,000/- per month.

16) The learned Trial Court has clearly erred in observing that there is no clear statement in the plaint regarding possession of the plaintiff over the suit property. It will also be pertinent to state that the learned First Appellate Court has observed that the plaintiff cannot claim status of tenant although he may at best claim to be a licensee.

17) Perusal of the plaint indicates a positive statement as regards possession of plaintiff over the suit property.

Correctness or otherwise thereof cannot be examined while dealing with the application under Order VII Rule 11(a) of CPC. The agreement also indicates that plaintiff was permitted to store his movables in the suit property up to 31.12.2020 on payment of consideration @ Rs.10,000/- per month. The agreement refers to this payment of Rs.10,000/- per month as rent.

18) An action of rejection of plaint is a drastic action which has the consequence of defeating the suit without trial. The power of rejection of plaint, therefore, must be exercised only when it is absolutely clear that the plaint does not disclose any cause of action or is barred by law. Unless a definite opinion in this regard can be formed, plaint must not be rejected. Reliance in this regard can be placed on judgment of Hon'ble Supreme Court in the matter of *P V Guru Raj Reddy Vs. P Neeradha Reddy and ors*, reported in *(2015)8 SCC 331*.

19) It must also be borne in mind that even a trespasser in settled possession cannot be dispossessed without

following due process of law. The learned Courts have committed a serious error in rejecting the plaint and dismissing the appeal arising out of the said order.

20) Mr. Dangre, the learned Advocate for respondent Nos.1 and 2, has placed reliance on judgments of the Hon'ble Supreme Court in the matter of *C. M. Beena and anr Vs. P N. Ramachandra Rao* reported in *(2004) 3 SCC 595 and* in the matter of *Associated Hotels of India Ltd., Vs. R. N. Kapoor*, reported in *(1959) SCC onLine SC 62*, wherein the Hon'ble Supreme Court has held that, while determining the issue as to whether a person is a lessee or a licensee, the real intention of the parties must be deciphered from the plain reading of the document in the light of other surrounding circumstances and conduct of parties before and after execution of document. The judgment also explains difference between a lease and license. The judgment does not pertain to order VII Rule 11 of the Code of Civil Procedure, 1908. In the case at hand, the plaint averments will have to be taken on their face value alongwith the contents of the agreement in question. The plaintiff claims to

be in possession of the suit property. The plaint cannot be rejected in view of settled legal position that even a trespasser cannot be dispossessed without following the due process of law.

21) He has further placed reliance on judgment in the matter of *Suhas Yeshwant Chopde Vs. Sachhidanand D. Purekar*, reported in *(1999) 5 SCC 721*, to contend that use of the word “rent” in the agreement should not be given undue importance in interpretation of the agreement and intention of parties should be gathered from entire contents of agreement. In the said case, the Hon’ble Supreme Court has interpreted the agreement in question to hold that the respondent was allowed to occupy the suit property by the appellant only on temporary basis for a period of 6 months. The ratio of the said judgment is not that a person in settled possession can be dispossessed without following due process of law. In the said case, the owner of the property had filed a suit for possession and mesne profits, which came to be allowed finally by the Hon’ble Supreme Court.

22) He has also placed strong reliance on judgment in

the mater of ***Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira (Dead) Through LRS***, reported in ***(2012) 5 SCC 370***. He has particularly placed reliance on the following portions of the judgment:-

“92. *The respondent has not been able to establish the family arrangement by which this house was given to the respondent for his residence. The Courts below have failed to appreciate that the premises in question was given by the appellant to her brother, the respondent herein as a caretaker. The appellant was married to a naval officer who was transferred from time to time outside Goa. Therefore, on the request of her brother she gave possession of the premises to him as a caretaker. The caretaker holds the property of the principal only on behalf of the principal.*

97. Principles of law which emerge in this case are crystallized as under:-

(1). *No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*

(2). *Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*

(3). *The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*

(4). *The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.*

(5). *The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”*

The said judgment will not be of any help to respondent Nos.1 and 2 in the present case in view of the clear pleadings in the plaint that the plaintiff is in possession of the suit property and settled legal position that even a trespasser in settled possession cannot be dispossessed without following due process of law, as is held in the matter of ***Rame Gowda (Dead) by LR's Vs. M. Varadappa Naidu (Dead) by LR's and anr.***, reported in ***(2004) 1 SCC 769***. It also needs to be stated that the plaintiff does not claim to be in possession of the suit property as a caretaker, servant or agent of defendant No.1. He claims possession on the basis of

an agreement which indicates payment of rent for occupation of the same.

23) Other judgments filed on record by the learned Advocate for respondent Nos.1 and 2 were not referred to during the course of hearing.

24) In view of the above, in the considered opinion of this Court, the Second Appeal is deserves to be **allowed** and is accordingly allowed in the following terms:-

i) Judgment and order of rejection of plaint dated 23.02.2023 passed by the learned 6th Jt. Civil Judge, Junior Division, Wardha on application at Exh.19 in Regular Civil Suit No.298 of 2022 and judgment and decree dated 04.05.2023 passed by the learned District Judge-3, Wardha in Regular Civil Appeal No.29 of 2023, are quashed and set aside.

ii) Application at Exh.19 in Regular Civil Suit No.298 of 2022 is **rejected**.

(ROHIT W. JOSHI, J.)

LATER ON

At this stage learned Counsel for the respondent makes a prayer to stay the effect and operation of the present judgment for a period of eight weeks to enable the respondent to assail the judgment and decree before the Hon'ble Apex Court. The effect and operation of the present judgment and decree is stayed upto **31.01.2026**.

(ROHIT W. JOSHI, J.)

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