



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

Second Appeal No.383 of 2014

Vilas s/o Damodhar Bhruguwar

vs.

Sou. Vidya Vinayrao Dixit and others

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Ms. Tejal Agre h/f Mr. S.P. Bhandarkar, Advocate for the Appellant.
 Mr. Nitin Bhisikar, Advocate for Respondent No.2.*

CORAM: ROHIT W. JOSHI, J.

DATE : 16th SEPTEMBER, 2025.

The present appellant is defendant No.2 in Regular Civil Suit No.26/2001, which was filed by present respondent Nos.1 to 16 for eviction and possession. The suit property was owned by one Narayanrao Sambashiv Ganguwar, who died issue-less. The respondents/defendants are the real brothers and sisters of deceased-Narayanrao.

02. The case of the plaintiffs is that deceased-Narayanrao during his life time had allowed defendant No.1-Damodar @ Baburao Gopalrao Bhruguwar to occupy the suit property due to family relations. Defendant No.2 is son of defendant No.1-Damodar. The premises were let out in order to enable defendant No.2 to utilize the same as his Office. Defendant No.3 was subsequently added in the suit under Order I Rule 10 of the Code of Civil Procedure (C.P.C.), since he is a brother of deceased-Narayanrao. The plaintiffs had issued a notice for eviction to the defendants in response to which, the defendants claimed that they were not in occupation of the suit property as tenants, but pursuant to an agreement of sale entered into by them with deceased-Narayanrao.

03. The learned trial Court has decreed the suit holding that the plaintiffs were co-owners of the suit property and that the defendants were inducted in the suit property as tenants. The learned trial Court has observed that the defendants had forfeited their character as tenants by claiming that they were in a possession of suit property pursuant to an agreement to sale and also because they have questioned the ownership of the plaintiffs over the suit property. Being aggrieved by the aforesaid decree for eviction and possession passed by the learned trial Court, the present appellant preferred appeal, which was also dismissed vide judgment and decree dated 03/05/2014. The present second appeal is filed challenging the said concurrent decrees.

04. Ms. Tejal Agre, learned Advocate appearing for the appellant contends that the suit property is located within the municipal limits of Gadchiroli town and, therefore, was subject to the provisions of the erstwhile the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (*hereinafter referred to as 'Rent Control Order' for brevity*) and now protection under the Maharashtra Rent Control Act, 1999 (*hereinafter referred to as 'Rent Control Act' for brevity*) is available. She further contends that the plaintiffs have failed to prove that they were absolute owners of the suit property and as such they were not entitled to file suit for eviction against the defendants. She further contends that the learned Courts below ought to have accepted the case of the defendants that they were in occupation of the suit property in term of the agreement entered into with deceased-Narayanrao and further claims that the defendants had become owners of the suit property by way of adverse possession.

05. As regards the contention with respect to agreement of sale, it is apparent on the face of record that there is no document with respect to the alleged agreement of sale. The case appears to be one of

oral agreement. However, the pleadings and evidence are completely silent with respect to the date and tentative period of the alleged agreement. There is also no clarity with respect to the terms and conditions of alleged agreement of sale. The contention that the defendants were in occupation of the suit property on the basis of agreement of sale, is, therefore, liable to be rejected.

06. The defendants have taken plea of perfecting title by adverse possession as well. The defendants have clearly stated that they were permitted by deceased-Narayanrao to occupy the suit property. Thus, the entry of defendants in the suit property is permissive and consequently their possession was also permissive possession. The defendants also claim to have entered into an agreement of sale with deceased-Narayanrao, which again implies that their possession was permissive. It appears that their contention is that the possession is hostile as against the plaintiffs. In order to successfully claim ownership on the basis of adverse possession, it was necessary for the defendants to clearly plead and then prove as to, since when and how their possession became adverse. The pleadings and evidence are completely silent in this regard. The starting point on which the possession became adverse is not mentioned either in the pleadings or in the evidence. The contention with respect to adverse possession is liable to be rejected, since the defendants have miserably failed to prove the same.

07. In the alternate, the defendants claim protection under the provisions of the erstwhile Rent Control Order and now under the provisions of the Rent Control Act. The defendants have failed to prove that they were in occupation of the property as tenants and that they were paying any rent for occupation of the suit property. Protection of the erstwhile Rent Control Order and the Rent Control

Act cannot be claimed unless payment of rent is proved. Apart from this, the defendants have renounced their character of tenant by claiming ownership on the basis of adverse possession and also claiming to be in possession of the property based on agreement, which results in forfeiture of tenancy. Protection of Rent Control Act cannot be claimed by tenant to fortify his tenancy rights.

08. The last contention, that the plaintiffs are not absolute owners of the suit property and, therefore, suit for possession filed by them is not maintainable, is also liable to be rejected. The defendants do not dispute that the plaintiffs are real brothers and sisters of deceased-Narayanrao. It is also not in dispute that deceased-Narayanrao has not left behind any Class-I legal heir. It is obvious that the suit property was inherited by the plaintiffs after demise of Narayanrao. The contention of the defendants is that all the Class-II legal heirs have not filed the suit and, therefore, the suit is not maintainable. It is well settled that even one co-owner can file a suit for eviction and possession against the tenant or trespasser. The said proposition is well settled and there cannot be any quarrel with respect to the same. The status of the plaintiffs as co-owners cannot be disputed. The said contention is also liable to be rejected.

09. In that view of the matter, no substantial question of law arises for consideration. The second appeal is dismissed with no order as to costs.

JUDGE

**sandesh*