



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

SECOND APPEAL NO. 48 OF 2005.

1.Smt. Chandrakala wd/o Kamalsingh Thakur.
Aged about 58 years, Occupation
Business,

2.Shubhangi d/o Kamalsingh Thakur,
Aged about 35 years, Occupation
Private,

3.Manisha d/o Kamalsingh Thakur,
Aged about 38 years, Occupation
Private,

4.Narendra s/o Kamalsingh Thakur,
Aged about 35 years, Occupation
Private,
(Appellant No.4 deleted vide
order dated 08.10.2024.)

Appellant Nos.1 to 4 are all residing
at Shakti Hotel, Collectors Compound,
Civil Lines, Nagpur.

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APPELLANTS.
(Ori.L.Rs. Of Defendant)

VERSUS

1.Ruplal Devidin Banode,
(since deceased through his legal
representatives)

Rgd.

1-a) Chanda w/o Ruplal Banode,
Aged about 62 years, Occupation
Household,

1-b) Anil s/o Ruplal Banode,
Aged about 40 years, Occupation
Service.

1-c) Arti w/o Kishor Badodiya,
Aged about 40 years, Occupation
Household,

1-d) Kirti d/o Ruplal Banode,
Aged about 38 years, Occupation
Household,

1-e) Priti d/o Ruplal Banode,
Aged about 36 years, Occupation
Household,

Respondent Nos.1-a to 1-e are all
residents of Mohan Nagar, Khalasi
Line, New Shiv Mandir, Nagpur.

2.The State of Maharashtra,
through the Collector, Nagpur.

... .RESPONDENTS.
(Ori. Plaintiff)

Mr. R.R. Prajapati, Advocate for Appellants.
Mr.R.D. Dhande, Advocate for Respondent Nos.1 [a] to 1 [e].
Mr. R. Kavimandan, A.G.P. for Respondent No.2.

CORAM : ROHIT W. JOSHI, J.

CLOSED FOR JUDGMENT ON : 05.05.2025

JUDGMENT PRONOUNCED ON : 30.05.2025

JUDGMENT :

The present Second Appeal is filed by the original defendant challenging the judgment and decree dated 03.05.1995 passed by the learned Civil Judge, Senior Division, Nagpur in Special Civil Suit No.327/1977, thereby granting a declaration that the plaintiff was owner of structure of a business establishment named “Shiv Shakti Vishranti Gruh”, situated in Collectorate Compound at Nagpur and decree of possession in favour of the plaintiff. Challenging this judgment and decree, the defendant/appellant preferred first appeal under Section 96 of the Code of Civil Procedure bearing Regular Civil Appeal No.183/1995, which was dismissed by the First Additional District Judge, Nagpur vide judgment and order dated 24.09.2004. This appeal challenges both the judgment and

Rgd.

decrees passed by the Courts below.

2. The respondent/plaintiff filed a suit for possession against the appellant/defendant with respect to two properties, namely business establishments of 'Shiv Shakti Vishranti Gruh' and 'Janta Hotel'. It is the case of the plaintiff that the defendant was a servant, who was looking after the business as a servant on his behalf. The plaintiff claimed that the defendant had forcibly ousted him from both the business premises on 16.09.1974. The respondent/defendant came up with a defence that he was conducting the business of Shiv Shakti Vishranti Gruh in partnership with the plaintiff. As regards the business of Janta Hotel, the defendant claimed to be owner thereof.

3. The learned Trial Court has dismissed the suit as regards Janta Hotel, however, as stated above, the learned Trial Court passed a decree for declaration of ownership and possession in favour of the plaintiff with respect to the business establishment of Shiv Shakti Vishranti Gruh i.e. the suit property. As stated above, the appeal preferred by the defendant was also dismissed. As such, aggrieved by

the concurrent decrees passed against him, the present appeal is preferred by the appellant/original defendant. The appeal was admitted on 30.07.2007 on the following substantial questions of law :-

- “1. *Whether the Courts were justified in granting a decree for possession when the findings recorded by both the courts were not supported by the pleadings of the plaintiff?*
2. *Whether oral evidence which is unsupported by pleadings could be considered by the Courts for granting the relief in favour of a party ?”*

During the Course of hearing of the appeal, the following two substantial questions of law came to be framed vide order dated 23.04.2025 :-

- “1. *Whether the plaintiff is entitled to relief of possession, having failed to demonstrate better title in view of existence of Lease Deed which is granted in favour of the Defendant before a period of around 15 months prior to filing of the suit ?*
2. *Should the Appeal be dismissed in view of pursis dated 24/9/2018 filed by the Appellant informing that*

Respondent had expired on 27/7/2014 without leaving behind any legal representative, on the basis of which, the Appeal came to be disposed of by holding that Special Civil Suit No.327/1997 filed by the Respondent stood abated vide order dated 24/9/2018 and subsequent order dated 8/9/2023, whereby the order dated 24/9/2018 was recalled and Second Appeal was restored to file ?”

4. The case of the plaintiff with respect to the suit property is that the land in relation to the suit property was obtained on lease by him in the year 1971. The plaintiff claims that the defendant was his servant and that a document titled as ‘Naukarnama’ was executed evidencing master – servant relationship. The plaintiff claimed that on 18.09.1974 when he was sitting in Janta Hotel, the defendant came there along with some antisocial elements armed with knife, he snatched keys of the cupboard and forcibly took away all the documents from the cupboard and also took possession of the business premises of Janta Hotel. The plaintiff contends that he had rushed to the Sitabuldi Police Station for lodging complaint with respect to the said incident. The plaintiff claimed that on the next day, when he went to Shiv Shakti Vishranti Gruh, the defendant and his accomplices

forcibly prevented him from entering the business premises and forcibly occupied the same. In such manner, the plaintiff claims the possession of Shiv Shakti Vishranti Gruh was also forcibly taken from him.

5. The defence of defendant with respect of the suit property is that the parties were doing the business of Shiv Shakti Vishranti Gruh in partnership. The defendant contended that the partnership agreement was initially an oral agreement and thereafter, a formal partnership deed was executed on 31.03.1975. The defendant also claimed that the partnership firm was duly registered. It is the case of the defendant that although the plaintiff had taken lease of the land, he did not have sufficient funds to set up the business, and therefore, he had entered into a partnership with the defendant for the said business. The defendant claimed that he had made all the investments for construction of structure and purchase of furniture, fixtures, utensils etc.

6. It will be pertinent to mention that the plaintiff has

disputed execution of the partnership deed. The plaintiff has pleaded that the defendant was forcing him to sign the partnership deed, however, despite said pressure, he did not sign the partnership deed. The plaintiff claims that the partnership deed is a false document.

7. It will be pertinent to mention here that lease with respect of the suit property thereafter came to be renewed in favour of the defendant. The defendant also opposed the suit on the ground that lease with respect of the property of Shiv Shakti Vishranti Gruh i.e. suit property was executed in his favour, and therefore, the plaintiff was not entitled to a decree of possession.

8. Based on the rival pleadings, the learned trial Court framed issues in the matter and recorded evidence of rival parties. The plaintiff has examined himself and two witnesses in his support namely – an Executive Engineer, Public Works Department and handwriting expert. The hand writing expert has given his opinion that the signature on the partnership deed was not the signature of the plaintiff. As against this the defendant has examined himself and three

witnesses namely – Parshuram Dhote, who was working as Assistant State Examiner of Documents with the office of State CID, Harikisan Shrivastav as attesting witness to the partnership deed and Kailaspati Baroha, Junior Engineer in the office of Assistant Registrar, Nagpur.

9. It will be pertinent to mention that the evidence on record indicates that the defendant got the lease renewed in his favour as partner of the plaintiff in the business of Shiv Shakti Vishranti Gruh. Therefore, the partnership deed assumes significance.

10. The learned trial Court has on the basis of the evidence of hand writing expert held the partnership deed is a forged document. It is held that it does not bear signature of the plaintiff. The learned trial Court has drawn adverse inference against the defendant for not examining handwriting expert, despite several opportunities granted to him for said purpose.

11. Before the learned First Appellate Court, the defendant raised a contention that the findings by the learned trial Court with respect to the partnership deed were without pleadings and therefore,

the findings were unsustainable. The learned First Appellate Court has held that the findings with respect to the partnership were recorded in the light of pleadings in the plaint whereby the plaintiff had specifically disputed the signature on the partnership deed. The First Appellate Court on re-appreciation of the evidence concurred with the learned trial Court and held that the partnership deed was not a genuine document. The learned First Appellate Court dismissed the appeal holding that the defendant had forcibly evicted the plaintiff from the suit property.

12. In such circumstances the present Second Appeal is preferred by the original defendant. As regards the substantial question of laws nos. 1 and 2, framed vide order dated 30.07.2007, the questions pertain to grant of decree for possession on the basis of findings which are recorded without pleadings in the plaint. A perusal of paragraph no.9 of the judgment by First Appellate Court will demonstrate that the defendant has raised a grievance with respect to pleadings regarding signature of the plaintiff on the partnership deed. The contention of defendant was that the plaintiff led evidence

contending that he had not signed the partnership deed, whereas his contention in the plaint was otherwise. It was contended that there was variance in the pleadings and evidence of plaintiff in this regard. The learned First Appellate Court has rejected the contention referring to paragraph nos. 18A and 19 of the plaint.

13. I have perused pleadings in paragraph nos. 18A and 19 of the plaint. Perusal of said paragraphs will demonstrate that the plaintiff has stated that the plaintiff has certainly disputed his signature on the partnership deed. The plaintiff has also asserted that the defendant had got the partnership deed registered by making a false declaration regarding the partnership firm on the basis of forged signature of the plaintiff. The plaintiff has reiterated this stand in his examination-in-chief. He has disputed the signature on the partnership deed in the examination-in-chief. It is thus clear that the plaintiff has disputed his signature on the partnership deed in the plaint and reiterated the said stand in his examination-in-chief. The plaintiff's evidence in this regard is in consonance with the pleadings.

The questions of law framed vide order dated 30.07.2027 are therefore, answered in favour of the respondent/plaintiff and against the appellant/defendant.

14. As regards the substantial question of law no.1 framed vide order dated 23.04.2025, it is undisputed that the defendant has obtained a lease deed with respect of the suit property in his favour. However, evidence of plaintiffs witness no.2, who is an Executive Engineer, Public Works Division, Nagpur needs to be appreciated in this regard. The said witness has stated in his examination-in-chief that the office of the P.W.D. had issued letter to the plaintiff for renewal of lease. It is stated that these letters were replied by the defendant. The witness has stated that the defendant claimed to be in partnership with the plaintiff and expressed his readiness for renewal of the lease. The defendant has also filed copy of the partnership deed with the office of the lessor/P.W.D. The witness has categorically stated that lease in favour of the defendant was executed on the basis of partnership deed. Perusal of cross-examination of this witness will demonstrate that his statement that the lease was renewed in favour of

the defendant on the basis of partnership deed is not disputed.

15. In view of above, it is necessary to examine the veracity of partnership deed. As stated above, the plaintiff has all throughout disputed his signature on the partnership deed. The plaintiff has examined hand writing expert as his witnesses who has given a report that the signature on the partnership deed is not of the plaintiff. As against this, the defendant has not examined any witness despite opportunities being granted for said purpose. The witness no.2 for the defendant, who is examiner of documents from the office of State CID, has stated that he has not perused the partnership deed. He has stated that the disputed partnership deed at Exh.134 was not referred to his office for opinion. It is clear that the said witness has not examined the partnership deed. He has clearly stated that without examining the said document he cannot give any definite opinion about the signature of the plaintiff on the said document. As regards the attesting witness to the partnership deed, the said witness has not stated that the plaintiff had signed the document in his presence or

that the plaintiff had personally confirmed about execution of the partnership deed to him. Both the learned Courts below have recorded a clear finding in this regard holding that the evidence of defence witness no.3 was not sufficient to establish the execution of the partnership deed by the plaintiff. The said finding of fact is recorded on appreciation of the evidence. I have also perused the deposition of said witnesses. Indeed a statement of plaintiff making his signature on the partnership deed in his presence, is absent in the examination-in-chief. Likewise, the said witness has also not stated that the plaintiff has confirmed execution of the document to him. The finding recorded by the learned Courts in this regard therefore, does not warrant any interference, particularly in exercise of jurisdiction under Section 100 of the Code of Civil Procedure.

16. It is a matter of record that the lease in favour of the plaintiff was renewed upto the year 1976. The lease is thereafter obtained by the defendant in his name. The evidence on record establishes that the lease is obtained on the basis of partnership deed at Exh.134, which is proved to be a false document. The defendant

cannot claim any right on the basis of such lease deed. The learned Courts have rightly discarded the lease deed which is obtained by the defendant on the basis of bogus partnership deed. The lease deed therefore, is of no consequence and the therefore contention of defendant that decree for possession cannot be passed against him in view of subsequent lease deed in his favour, is liable to be rejected. It must be mentioned that the plaintiff was in possession of the suit property. The plaintiff was holding the suit property as a lessee. The lease deed contains a clause for renewal, and was renewed in favour of the plaintiff from time to time. The lease deed was renewed upto the year 1976 in favour of the plaintiff. The forcible eviction of the plaintiff is dated 18.09.1974. In that view of the matter, no fault can be found with the decree for possession passed by both the Courts below in favour of the plaintiff. The question of law is therefore, answered in favour of the plaintiff and against the defendant.

17. As regards the substantial question no.2 framed vide dated 23.04.2025, it is revealed from the record that the original plaintiff/ respondent expired on 27.07.2014 during the pendency of

the present appeal. The appellant/defendant has filed a Pursis on 29.04.2018 informing that the plaintiff/respondent had died without leaving any legal representatives. On the basis of the said statement, the Second Appeal came to be disposed of vide order dated 24.09.2018. Relying on the statement made in the pursis dated 24.09.2018 filed by the appellant, Special Civil Suit no.327/1977 filed by the plaintiff was disposed of as abated.

18. Thereafter, legal representatives of the plaintiff/respondent moved Civil Application Nos. 723 and 724 of 2022, seeking condonation of delay, setting aside abatement and bringing their names as legal representatives of deceased respondent on record. The said applications came to be allowed vide order dated 08.09.2023. This Court has taken note of the false statement made in the pursis dated 23.09.2018 and was accordingly pleased to recall the order dated 23.09.2018 disposing of the suit as abated. Paragraph no.6 of the order dated 08.09.2023 refers to an affidavit dated 16.07.2025 filed by legal representatives of the deceased respondent in Special Darkhast No.6/2005 for bringing their names on record. Special Darkhast

No.6/2005 is filed for execution of the impugned decree for possession passed in favour of the plaintiff. It is therefore, apparent that the appellant was aware that the respondent was survived by legal representatives and yet he made a false motion to this Court vide pursis dated 29.04.2018. It also needs to be recorded that the parties are known to each other. Where as it is a case of the plaintiff that the defendant was his servant, the defendant contends that he was partner of the plaintiff. In such circumstances, it is most unlikely that the defendant/appellant was not aware about the fact that the respondent/plaintiff was survived by legal representatives i.e. by his widow and children. In view of the affidavit filed before the Executing Court for bringing names of legal representatives of deceased respondent on record, it is apparent that the appellants had knowledge about the legal representatives. The appellants have not given any clarification with respect to their conduct in filing of incorrect pursis. It appears that there was willful and deliberate attempt on the part of the appellant in getting the suit disposed as abated by making false representation to this Court. The appeal is also

liable to be dismissed due to such conduct. Reliance in this regard can be placed on the judgment of this Court in case of **Mallappa Shivling Nandani .vrs. Bhushan Prakash Risbud and another** reported in 2016 [3] Mh.L.J. 618. The substantial question of law is thus, answered in favour of the respondent and against the appellant.

19. In view of the findings recorded above, the Second Appeal is dismissed with costs.

20. At this stage, learned Advocate for the appellants states that the interim order which was operating during the pendency of second appeal be continued for a period of six weeks. The learned Advocate for the respondents strongly opposes the request. However, having regard to the fact that interim order was operating throughout the pendency of second appeal, I am inclined to extend the same for a period of six weeks from today.

JUDGE