



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

SECOND APPEAL NO. 161 OF 2022

Dattatray Nanaji Shastrakar
Aged 66 years, Occ : Retired
R/o. Behind Gadge Baba Mandir,
Gadge Nagar, Amravati,
Tq. & Dist.Amravati

}

.. Appellant

Versus

Gautam Shankarrao Thombre
Aged about 77 years, Occ : Retired,
R/o. Pimpla Kewalram,
Tq.Narkhed, Dist.Nagpur

}

.. Respondent

Mr. S.Y. Deopujari, Advocate for appellant.
Mr. S.T. Dhurwey, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.

DATED : DECEMBER 22, 2025

ORAL JUDGMENT

(1) Heard finally with the consent of the learned counsel appearing for the parties on the following substantial questions of law framed vide order dated 18.10.2022 :

“1) Whether learned Courts below were justified in holding that the evidence lead by wife of appellant/defendant cannot be looked into on the ground that she does not claim to have done anything in pursuant to the power of attorney given by her

husband to her and defendant failed to enter into witness box, therefore, it was justified to draw adverse inference against the defendant ?

2) Whether the learned Trial Court had jurisdiction to try present suit, same has been hit by provision under Order 7, Rule 11 of C.P.C. and while deciding the said suit, the learned Trial Court failed to frame specific issue on the point of jurisdiction instead of objection taken by the appellant in his written statement at Exh. 11 ?

3) Whether both the Courts below recorded perverse finding regarding the landlord tenant relationship ?”

(2) The present appeal is preferred by the appellant/original defendant against the decree of eviction passed against him. The respondent is the original plaintiff. Parties will be referred as plaintiff and defendant hereinafter. It is the case of the plaintiff that defendant was inducted in three rooms of the suit property as a gratuitous licensee having regard to the cordial relations interse between the plaintiff and defendant. The plaintiff further pleads that the possession of other two rooms of the suit property was taken by the defendant illegally although they were not let to him as gratuitous licensee or in other capacity.

(3) The defendant has come up with a case that he was in occupation of the suit property as a tenant since 30.09.2001 on monthly rent of Rs.1000/-p.m.. He contended that the entire house

comprising five rooms was let out to him. The defendant had also come up with the case that oral agreement with respect to the suit property was entered into between the plaintiff and defendant, whereby the defendant had agreed to purchase and plaintiff had agreed to sell the said house for a consideration of Rs.12 Lakh, out of which a sum of Rs.10 Lakhs was paid by the defendant to the plaintiff. The learned Courts have accepted the case of the plaintiff that defendant was inducted in the suit property as a gratuitous licensee.

(4) The plaintiff has entered the witness box and has recorded his examination-in-chief in tune with his case that the defendant is not gratuitous licensee. The defendant examined his wife, who also holds Power of Attorney (PoA) on his behalf as his witness. The defendant's wife deposed about his case of oral tenancy, as well as oral agreement. Two other witnesses are examined by the defendant to establish payment of rent.

(5) The learned trial Court has recorded findings that the case of oral tenancy was not proved by the defendant. In the Written Statement the defendant had stated that he had entered into oral agreement of lease with the plaintiff. The learned Trial Court recorded that as per the pleadings in the Written Statement, the alleged oral agreement was not arrived at in the presence of wife of the defendant

and therefore, she could not have any personal knowledge about the alleged oral agreement of tenancy. The learned trial Court also found that no evidence was placed on record in order to establish payment of rent and has accordingly held that the defendant was in occupation of the suit property as a gratuitous licensee. It is also held that the case of the alleged oral agreement of sale is also not proved. Based on such conclusion, decree for eviction came to be passed by the learned trial Court.

(6) The learned First Appellate Court has confirmed the findings of facts recorded by the learned trial Court. While doing so, the learned First Appellate Court had also discussed in detail pleadings and evidence on record. Learned First Appellate Court has held that in the facts of the case where the defendant set up a case of oral agreement of lease it was necessary for the defendant to enter into the witness box himself since the case of defendant is not that the alleged oral agreement of lease was arrived at in the presence of his wife.

(7) The defendant has examined two witnesses apart from his wife, namely Vijay Balpande and Vijay Paithankar. According to the witness Vijay Paithakar, he had been to the residence of the plaintiff to pay rent of Rs.10,000/- to him, on instructions of the defendant on 24.09.2009. In his cross-examination, he was unable to give the

precise details of the address of the plaintiff. The witness is a resident of Amravati. The village of plaintiff is at a distance of around 100 Kms from Amravati. The witness has not obtained any receipt regarding payment of rent from plaintiff. The learned First Appellate Court has, therefore, discarded his evidence as not trustworthy. The learned First Appellate Court has observed that no plausible explanation is offered as to why the said witness travelled the distance of 100 Kms for making payment of rent of Rs.10,000/- to the plaintiff and returned without even obtaining a receipt to evidence the payment.

(8) As regards testimony of Vijay Balpande, the said witness has stated that the plaintiff had called him on 29.09.2009 and had given chit to forward the same to the defendant claiming that rent for 28 months was outstanding and unpaid. The learned First Appellate Court found it difficult to digest that, although witness Paithankar had allegedly been to plaintiff to make payment of rent of Rs.10,000/-, the plaintiff did not give message regarding the alleged outstanding to the said witness and rather 5 days later called Vijay Balpande to give the said message to defendant. The version of witness Vijay Balpande that acknowledgment regarding receipt of rent was given to him by the plaintiff alongwith a message regarding outstanding on 29.09.2009 is found to be unbelievable by the learned First Appellate Court, since receipt was not issued on 24.09.2009 when Mr. Paithankar allegedly

paid the rent and 5 days later another person was called to issue an acknowledgment and convey a message regarding outstanding rent. As regards witness Balpande, the learned First Appellate Court has again found that there is no probable reason for the said witness to visit the plaintiff and to take the chit to Amravati to the defendant at a distance of around 100 Kms.

(9) The observations by the learned First Appellate Court that evidence of the aforesaid witnesses is not reliable is based on appreciation of depositions of the said witnesses. The appreciation demonstrates that the learned First Appellate Court was justified in observing that the story as narrated by the said witnesses did not inspire confidence. This finding of fact, recorded on appreciation of evidence, cannot be re-appreciated by this Court.

(10) It must be stated that although the contentions with respect to oral tenancy or oral agreement of gratuitous license are 'word against word', the defendant could have led positive evidence to show payment of rent. The plaintiff cannot be expected to lead negative evidence to show that rent was never paid.

(11) In view of above, in the considered opinion of this Court first substantial question of law framed vide order dated 18.10.2022

deserves to be answered in favour of the plaintiff and against the defendant.

(12) As regards the second substantial question of law, in all fairness learned counsel for the defendant does not dispute that the suit will lie before the Civil Court since there is no small causes Court at Amravati. In view thereof, second substantial question of law is answered against the defendant.

(13) Accordingly, the Second Appeal is dismissed. No order as to costs.

[ROHIT W. JOSHI, J.]

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