



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

SECOND APPEAL NO.162 OF 2024

APPELLANTS :- 1. Shriram S/o. Eknath Lonare, Aged
(Ori. Defendants)
(on R.A.) about 69 years, Occu: Cultivator
R/o.77, Shrihari Nagar No.2, Nagpur

2. Vijay S/o. Namdeorao Lonare, Aged
about 57 years, Occu: Cultivator
R/o.77, Shrihari Nagar No.2, Nagpur

..VERSUS.

RESPONDENT :- 1) Smt. Rimatai W/o. Ghanshyam Lonare,
(Ori. Plaintiff) Aged about 63 years, Occu: Cultivator
R/o. Gumgaon, Tahsil & District
Nagpur

Mr. A. M. Quazi with Mr. T.A. Mirza, Advocates for Appellants.
Mr. Markandewar a/w. Mr. R. D. Murkute, Advocates for the Respondent.

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

DATE : **25.02.2026**

J U D G M E N T :

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

2) The present Second Appeal is preferred against judgment and decree dated 03.04.2007 passed by the learned 5th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.235 of 2000, whereby the suit for possession filed by respondent came to be decreed and counter-claim for specific

performance of contract filed by the appellants came to be dismissed and judgment and decree dated 29.04.2023 passed by the learned District Judge-15 and ASJ, Nagpur dismissing Regular Civil Appeal No.1090 of 2012 filed by the appellants/ original defendants against the aforesaid decree passed by the learned Trial Court.

3) The parties will be referred as “plaintiff” and “defendants” hereinafter.

4) The plaintiff filed the suit against the defendants *inter alia* contending that the defendants were in occupation of the suit property as her licensees and that the licence was without any consideration. The defendants filed a written statement opposing the suit. They also filed a counter-claim *inter alia* contending that an oral agreement of sale was entered into between the parties, whereby the plaintiff had agreed to sell the suit property to them for a consideration of Rs.75,000/-.

5) The only point raised by the learned advocate for the defendants/appellants is that, since the suit is filed contending that the defendants were in occupation of the suit

property as gratuitous licensees, the learned Civil Court did not have jurisdiction to entertain the suit. It was contended that this objection pertaining to jurisdiction was raised in the appeal by amending the written statement. A grievance is made that, although the written statement was allowed to be amended, issue of jurisdiction is not decided by the learned First Appellate Court.

6) Mr. Quazi, learned Advocate for the appellants/defendants, places reliance on judgment of the Hon'ble Supreme Court in the case of *Prabhudas Damodar Kotecha and Ors. Vs. Manhabala Jeram Damodar and Anr.*, reported in (2013) 15 SCC 358 and unreported judgment of this Court in the case of *Sitaram Punjaram Borikar Vs. Leelabai Rambhau Borikar (Second Appeal No.107 of 2015 decided on 09.01.2017 at Nagpur Bench)*.

7) In view of submissions canvassed, following substantial question of law came to be framed:-

“Whether the Civil Court has jurisdiction to entertain a suit for eviction against a gratuitous licensee? ”

8) Mr. Markandewar, learned Advocate for the respondent/plaintiff, stated that he does not dispute the legal position that the suit would lie before the learned Small Causes Court in view of Section 26 of the Provincial Small Cause Courts Act, 1887 and that jurisdiction of the Civil Court will be barred. He, however, makes a request that rather than dismissing the suit, the plaint be returned to the respondent/plaintiff for presentation before the Court of Small Causes. He further requests to fix a date for appearance before the Small Causes Court at Nagpur as provided under Order VII Rule 10-A(2)(b) of the Code of Civil Procedure, 1908. Mr. Quazi, in fairness does not oppose the said requests.

9) In view of the aforesaid, Second Appeal is **allowed** in the following terms:-

i. Judgment and decree dated 03.04.2007 passed by the learned 5th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.235 of 2000 and judgment and decree dated 29.04.2023 passed by the learned District Judge-15 and ASJ in Regular Civil Appeal No.1090 of 2012 are

quashed and set aside.

ii. Plaint in Special Civil Suit No.235 of 2000 (decided by the learned 5th Joint Civil Judge, Senior Division, Nagpur vide judgment and decree dated 03.04.2007) is returned to the plaintiff in the said suit for presentation before the Small Causes Court at Nagpur.

iii. Parties are directed to appear before the learned Small Causes Court at Nagpur on **30.03.2026**.

iv. Parties to note that separate summons or notice for appearance will not be issued.

v. Decree with respect to dismissal of counter-claim is maintained.

vi. Having regard to the fact that the suit for eviction was filed in the year 2000, the learned Small Causes Court is requested to decide the suit as expeditiously as possible and in any case before **31.12.2026**.

vii. Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

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