



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

SECOND APPEAL NO. 788 OF 2017

(SMT. MANDA WD/O CHANDRAKANT PATURKAR AND OTHERS
VS
RAMESH S/O SHRIRAM BELE AND OTHERS)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. P. B. Patil, Advocate for appellants.
Mr. K. N. Dadhe, Advocate for respondents No.1 to 3.
Mr. T. S. Dadhe, Advocate for respondents No.2(a) to 2(d) and 4.

CORAM : ROHIT W. JOSHI, J.

DATED : MARCH 25, 2026

CIVIL APPLICATION (CAS) NO. 902 OF 2024

- 1) This is an application seeking leave to amend the appeal.
- 2) For the reasons stated in the application, leave to amend the appeal is granted. Amendment to be carried out forthwith.

SECOND APPEAL NO. 788 OF 2017

- 1) The present appeal is preferred challenging judgment and decree dated 18/07/2013, passed by learned Joint Civil Judge Junior Division, Morshi in R.C.S.No.79/2010 and judgment and decree dated 31/10/2017 passed by the learned District Judge-8 Amravati in R.C.A. No.128/2013. The appellants are the original defendants and respondents are original plaintiffs. The parties will be referred as plaintiffs and defendants hereinafter.

2) The plaintiffs filed suit for eviction, possession, recovery of arrears of rent and inquiry into mesne profits against the defendants. As stated above, the suit came to be decreed by the learned trial Court on 18/07/2013 granting a decree for possession, payment of arrears of rent and directions for inquiry regarding mesne profit from 17/07/2004 till the date of delivery of possession. Appeal preferred by the defendants came to be partly allowed. The learned first appellate Court maintained the decree for possession and inquiry into mesne profit, however, decree for payment of arrears of rent was modified holding that the plaintiffs were entitled to arrears of rent @Rs.1200/- p.m. from 01/11/2006 onwards. The defendants have filed the present appeal challenging the decree for eviction and possession.

3) The suit property was initially let by one Manglaji Bele to Mr. Hiranman Nanotkar and Namdev Paturkar in the year 1957 for a period of five years. Mr. Hiranman Nanotkar surrendered the lease and Mr. Navdev Paturkar continued with the lease after the year 1962. The defendant No.1 is son of Namdev Paturkar and defendants No.2 to 4 are widow and sons of Chandrakant, deceased son of Namdev Paturkar. The plaintiffs are sons of late Shriram S/o Manglaji Bele. Shriram had become owner of the suit property by virtue of partition in the family. It will be pertinent to state that although before the learned trial Court issue was sought to be raised with respect to maintainability of the suit by plaintiffs who are sons of Shriram, without joining other descendants of original lessor late Manglaji, the learned trial Court has held that the rent was being paid by the defendants to late Shriram and as such they had accepted Shriram as their landlord. It is also held that even if Shriram and consequently the plaintiffs were not exclusive owners of the suit

property, yet the suit would be maintainable at their behest in view of legal principle that a co-owner can maintain a suit for eviction against a tenant without joining other co-owners. However, it is not necessary to consider the said aspect any further because this ground was rightly not pressed during the course of hearing of the appeal.

- 4) The contention of Mr.P.B.Patil, learned advocate for the appellants/defendants the lease was initially granted by grandfather of plaintiffs. He contends that during the lifetime of plaintiffs' grandfather building structure was raised by the predecessor of defendants over the suit land. He contends that after the demise of plaintiffs' grandfather, a new lease between the plaintiffs' father and defendants came into existence and that this lease was with respect to a building and appurtenant land. He therefore, contends that protection of Maharashtra Rent Control Act, 1999 is available to the defendants.
- 5) It will be pertinent to note that contention with respect to applicability of M.R.C. Act was not raised before the learned trial Court. This contention was raised for the first time before the learned first appellate Court. Even before the learned first appellate Court the contention was that building was constructed over open land during lifetime of plaintiffs' grandfather and that when the plaintiffs' father became landlord, the lease was with respect to building with appurtenant land. Although argument with respect to applicability of M.R.C. Act was raised before the learned first appellate Court, the contention that when plaintiffs' father became the landlord, the lease was with respect to land with building is raised in the present second appeal for the first time.

- 6) Perusal of the judgment by the first appellate Court indicate that a temporary structure was erected by the predecessor of defendants over the suit property which was an open land let on lease to predecessor of defendants.
- 7) It is not in dispute that the lease which was initially granted was with respect to open land. During subsistence of the lease predecessor of defendants constructed building structure over the suit land. It is obvious that the said building was not let by the plaintiffs' predecessor. After demise of the plaintiffs' father the plaintiffs are collecting rent from the defendants.
- 8) The contention of defendants that a new lease came into existence after demise of plaintiffs' grandfather and the said lease was with respect to land with building cannot be accepted. The plaintiffs' father received the suit land under partition and became landlord. The agreement with respect to lease between the plaintiffs' predecessor and defendants' predecessor continued upon demise of their respective predecessors. The defendants merely inherited leasehold rights as were initially granted. Likewise plaintiffs' father acquired status of landlord with respect to lease as was originally granted and plaintiffs assume character of landlord upon demise of their father. The contention that fresh agreement of lease came into existence and the same was with respect to land with building cannot be accepted. The lease continues to be one with respect to open land and not with respect to building structure along with land appurtenant to it. In view of the aforesaid, protection of M.R.C. Act cannot be claimed by the defendants.
- 9) The learned first appellate Court has rightly appreciated the legal position that protection of M.R.C. Act is not

available to a lessee with respect to lease of open lands. Legal position in this regard is now well settled.

- 10) In this regard, reference needs to be made to definition of the term “premises”, as defined under Section 7 (9) of the Rent Act, which reads as under :-

“Section 7(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including,---

(i) the gardens, grounds, garages and out-houses, if any. appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house.”

- 11) The definition clearly contemplates that “premises” means any building or part of the building let or given on licence. Therefore, in order to attract the provisions of Rent Act, lease must be with respect to a building. It must also be stated that there is also a reference to gardens, grounds, garages and out-houses in Section 8(9)(i). However, the said words are used in conjunction with words “appurtenant to such building”. The words “such building” will mean building, which is let or given on licence. Thus, any open land will fall within the definition of the term “premises”, if and only if it is appurtenant to any building let or given on licence. The building is constructed by the tenant on open land, which was given on lease. The lease, therefore, is not with respect to premises, as defined under the

Rent Act. Consequently, protection of the Rent Act cannot be claimed by the defendants/appellants.

12) This is the only point canvassed by the learned advocate for appellants/defendants.

13) In view of the aforesaid, no substantial question of law arises for consideration, second appeal is therefore, dismissed with no order as to costs.

14) At this stage, Mr. Patil, learned advocate for the appellant makes a request to extend the interim order dated 26/12/2017 for a reasonable period. Learned counsel for the respondents strongly opposes the request.

15) Having regard to the fact that interim order is in operation for a period around eight and half years, it will be expedient that it is extended for a reasonable period. The interim order dated 26/12/2017 is extended upto 31/05/2026.

(ROHIT W. JOSHI, J.)