



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

SECOND APPEAL NO.294 OF 2025

APPELLANTS

Ori. Defts.
(On R.A.)

- : 1. Laxmibai Ramnath Gupta, aged 50 years, occupation business, r/o. Vilas Nagar, Amravati
2. Ku. Kajal Ramnath Gupta, aged 18 years, occupation student, r/o. Vilas Nagar, Amravati
3. Sau. Priya Raju Gupta, aged about 31 years, occupation housewife, r/o. c/o. Radhesham Gupta, China Mill, Shivadi, Mumbai.

..VERSUS..

RESPONDENTS

Ori. Plaintiffs
(On R.A.)

- : 1. Ramji Amritlal Gupta, aged about 45 years, occupation business, r/o. Ramji Niwas, Mufassail Plot, Amravati.
2. Ashish Premlal Gupta, aged about 35 years, occupation student, r/o. Ramji Niwas, Mufassail Plot, Amravati.
- 3-a Smt. Maltibai Raghunath Gupta, aged adult, occupation housewife r/o. Vilas Nagar, Amravati.
- 3-b Mahendra Raghunath Gupta, aged adult, occupation Service, r/o. Vilas Nagar, Amravati.
- 3-c Mahesh Raghunath Gupta, aged adult, occupation service, r/o. Vilas Nagar, Amravati.

4. Shivilal Mohanlal Gupta, aged adult, occupation Futana shop, r/o. Near Balaji Mandir, Itwara Bazaar, Amravati.
5. Sau. Shardabai Lalchandani Gupta, (name deleted)
6. Raju Mohanlal Gupta, (name deleted)
7. Sau. Shewantabai Bablu alias aged adult, r/o. Opposite Cotton Market, Dhamangaon Railway, District Amravati.

Mr.J. J. Chandurkar, Advocate a/w. Mr. H.P. Jain, Advocate for Appellants.
Mr. S. V. Purohit, Advocate for the Respondent Nos.1 and 2.

CORAM : ROHIT W. JOSHI, J.

DATE : 16.02.2026

J U D G M E N T :

1) The present appeal is preferred by the original defendants, who have suffered a decree for possession passed by the learned Trial Court, which in turn is confirmed by the learned First Appellate Court.

2) The grandfather of the plaintiffs, Hajarilal and Defendant No.1, Mohanlal, were real brothers. Hajarilal was in occupation of the suit property as a tenant of Narayandas Udasi. The suit property is purchased by Amritlal, father of

plaintiff No.1, from the landlord, Mr. Narayandas Udasi vide registered sale dated 19.06.1996. The plaintiffs thereafter filed suit for eviction and possession against the defendants. The defendant No.2 is widow and other defendants are children of defendant No.1.

3) It is the case of plaintiffs that Hajarilal and defendant No.1/Mohanlal, were real brothers and that Hajarilal had allowed Mohanlal to occupy a portion of the suit property when he was in occupation of the same as tenant of Udasi family. It is stated that Hajarilal was a tenant and Mohanlal was only a permissive occupant, who was inducted by Hajarilal out of love and affection. It is also contended that defendant No.1 was allowed to use the property as a gratuitous licensee as stated above. Amrutlal purchased the suit property by way of registered sale dated 19.06.1996. The plaintiffs filed suit for eviction claiming ownership over the suit property and further that the defendants were in occupation of the same as gratuitous licensees.

4) The defendants opposed the suit, *inter alia* claiming

that defendant No.1 was also a tenant of the suit property along with his brother Hajarilal. It is contended that although rent receipts were being issued only in the name of Hajarilal, defendant No.1 also used to contribute half of the amount of rent and pay the same to Hajarilal, who in turn would pay the same to the landlord, Udasi family. He further contented that after purchase of the suit property by Amrutlal, the defendants became tenants of Amrutlal and continued to pay rent to him. The contention of the defendant is that they were all the while in possession of the suit property as tenants and not as gratuitous licensees.

5) The learned Trial Court has decreed the suit holding that the defendants had failed to prove their case of being tenants of the suit property. The learned Trial Court found that plaintiff had duly proved ownership on the basis of registered sale deed dated 19.06.1996 executed in favour of Amrutlal.

6) As regards the case of defendants with respect to contribution of rent and their status as tenants of Udasi family along with Hajarilal, the learned Trial Court has

placed reliance on a document at Exhibit 133, which is a statement made by defendant No.1, wherein he categorically stated that he was not a tenant of the suit property. It will also be pertinent to state that the landlord Udasi had instituted proceedings for eviction against Hajarilal in which he had stated that Hajarilal was the tenant and Mohanlal was inducted in the property by Hajarilal, although Mohanlal was not a tenant. In this proceeding, defendant, Mohanlal filed an application for deletion of his name contending that he had no concern with the suit property. This material is relied by the learned Trial Court to hold that defendant No.1/Mohanlal was not in occupation of suit property as a tenant.

7) The learned First Appellate Court has confirmed the findings recorded by the learned Trial Court upon appreciation of evidence. The above evidence is taken into consideration by the learned First Appellate Court in dismissing the appeal preferred by the defendant.

8) Mr. Jaideep Chandurkar, learned Advocate for the defendants argues that defendant's Witness No.1 had specifically stated in his examination in chief that defendant

No.1 was also paying rent to the erstwhile, landlord Udasi and after Amrutlal purchased the suit property rent was being paid to him. Mr. Chandurkar contends that this statement made in the examination in chief is not challenged in the cross-examination of this witness and, therefore, it must be deemed that correctness of this statement is accepted. As regards the document at Exhibit 133, Mr Chandurkar, contends that the signature on the document was obtained by Amrutlal by taking unfair advantage of illiteracy of defendant No.1/Mohanlal.

9) At the outset, it must be stated that signatures on document at Exhibit 133 are not in dispute. Perusal of the document will indicate that defendant No.1/Mohanlal has made a categorical and unambiguous statement that he had no concern with the property and was in occupation of the same as they permissive occupant without any right. He has also stated that he was not paying rent towards occupation of the suit property. The contention of defendant that Amrutlal obtained signature of defendant No.1/Mohanlal drawing unfair advantage of his illiteracy does not merit acceptance.

Defendant No.1/Mohanlal has studied up to 7th standard. He was a businessman all his life. He was a man of understanding having good knowledge of world affairs. These aspects have come to the fore in the cross-examination of defendant's witness. It is also a matter of record that defendant Mohanlal had filed an application for deletion of his name in the rent control proceedings initiated by Udasi family stating that he had no concern with the suit property.

10) The contention of Mr. Chandurkar is that the Witness No.1 of defendants is not cross-examined with respect to his statement that defendants were contributing rent, is not correct. I have perused the cross-examination of the witness. There is an elaborate cross-examination on this aspect. The statement that defendants were also contributing rent and that after purchase of the suit property by plaintiff's grandfather, they were paying rent to him is certainly challenged in cross-examination. Perusal of cross-examination of defendant's witness No.1 will demonstrate that he has admitted that he has not produced any documentary evidence on record in support of his contention

regarding contribution of rent payable to Udasi family. He has admitted that till the date of his cross-examination, he had not paid rent to the plaintiffs. He volunteered that he offered to pay the rent, however, the plaintiffs did not accept the same. In view of this statement, which was made voluntarily further questions were put in cross-examination as regards reasons for not sending rent by money orders. With respect to payment of rent to Udasi family questions are also put that he had never intimated members of Udasi family regarding contribution of rent by him. Thus, there is sufficient cross-examination to challenge version of defendants regarding contribution of rent payable to Udasi family and payment of rent to plaintiffs. As regards payment of rent to plaintiffs there is a clear admission that rent was never paid to plaintiffs. The contention that there is no cross examination on the aspect of contribution of rent cannot be accepted.

11) In view of the above, it cannot be said that the findings recorded by both the learned Courts regarding Mohanlal, being a gratuitous licensee are perverse or based on no evidence. Rather, the findings are based on proper

appreciation of documentary and oral evidence on record.

12) In the light of reasons recorded above, in the considered opinion of this Court, no substantial question of law arises for consideration in the present Second Appeal. Second Appeal is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

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