



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

SECOND APPEAL NO.361 OF 2025

APPELLANT :- Shri Anandrao Babasaheb Awaghad
(Dead) Through his L.Rs.

1. Shri Sanjay S/o Anandrao Awaghad,
aged about 53 Years, Occupation
Service, M.No.9822482571
e-mail awaghadsany@gmail.com

2. Shri Vinod S/o Anandrao Awaghad,
aged about 60 Years, Occupation
Busines

Both R/o Chhota Bazar, Main Road
Paratwada Tahsil Achalpur, District
Amaravati.

(L.Rs of Ori. Defendant)

..VERSUS..

RESPONDENTS :- Shri Durgashankar S/o Ghanshyam
Agrawal aged about 56 years,
Occupation Business R/o Paratwada
Tahsil Achalpur District Amaravati.

(Ori. Plaintiff)

Mr. K. B. Zinjarde, Advocate for Appellant.
Mr. S. S. Sarda, Advocate for the Respondent.

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

DATE : **09.01.2026**

J U D G M E N T :

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

2) The present Second Appeal is filed by the original defendant challenging decree for eviction passed against him, which is in turn confirmed by the learned First Appellate Court by dismissing the First Appeal preferred by him.

3) The present Second Appeal is filed challenging the said concurrent decrees for eviction. One Mahadev Prasad was owner of a building in which the suit property is situated. This Mahadev Prasad had bequeathed the suit property to one Premshankar, who in turn sold the suit property to the plaintiff/respondent vide registered Sale deed dated 08.09.1992, registered on 29.09.1992. The plaintiff claimed ownership over the suit property on the basis of the said sale deed.

4) The defendant/tenant had issued a notice/letter dated 15.09.1992 to Premshankar Trivedi, vendor of the plaintiff, *inter alia* claiming that the original owner Mahadev Prasad had prior to his demise expressed his intention to give the suit property to him. It is stated that after the demise of original owner Mahadev Prasad, the defendant was paying municipal taxes and was in peaceful settled possession of the

suit property for a period of more than 16 years as a lawful owner. It is further stated that although the gift by Mahadev Prasad was oral, the same was duly acted upon by deceased Mahadev Prasad during his lifetime. The defendant/tenant thus claimed ownership over the suit property on the basis of the said alleged oral gift. Apart from this, the defendant also made alternate claim in the notice/letter dated 15.09.1992 that he had acquired ownership over the suit property by virtue of adverse possession.

5) In view of the aforesaid notice/letter, which was issued by the defendant to the vendor of the plaintiff, which somehow reached the hands of the plaintiff, the plaintiff issued a legal notice dated 19.09.1992 to the defendant, *inter alia* claiming that by claiming ownership over the tenanted premises (suit property) and also by questioning the title of Prem Shankar (vendor), the defendant had forfeited his character of a tenant over the suit property and was accordingly in possession of the same as a trespasser. The notice further recites that the tenancy of the defendant was forfeited as per Section 111 of the Transfer of Property Act.

This notice/letter dated 19.09.1992 is followed by another notice/letter dated 10.11.1992, wherein the plaintiff has called upon the defendant to make payment of rent regularly on the last date of each tenancy month. The notice states that failure to do so would render the defendant, 'a habitual defaulter'. It is also pertinent to state that the notice dated 10.11.1992 makes a reference to earlier notice dated 19.09.1992 and clearly states that the stand taken in the said notice with respect to forfeiture of tenancy was maintained, even while demanding the rent. The plaintiff has stated in this notice that the demand was without prejudice to the claim of forfeiture. Thereafter, another letter dated 10.04.1993 is issued by the plaintiff to the defendant confirming receipt of amount of rent by money orders. The plaintiff has stated that the amount was accepted under protest and adjusted towards damages. The plaintiff has again confirmed that the claim of tenancy stood forfeited and was not given up. In these circumstances, the plaintiff filed a suit for eviction and possession against the defendant.

6) The defendant opposed the suit claiming protection under the provisions of the erstwhile C.P. and Berar Letting of Houses and Rent Control Order, 1949.

7) As regards forfeiture of tenancy, the contention is that the tenant had issued the notice/letter dated 15.09.1992 to the vendor of the plaintiff and not to the plaintiff himself. The contention is that when a person claims ownership by virtue of adverse possession, the title of the true owner of the property should be disputed and in the present case title of the true owner, namely the plaintiff, was not disputed. It is contended that title of plaintiff's vendor was disputed which did not amount to raising claim of adverse possession. Apart from this, it was also contended that by issuing a letter claiming payment of rent on 10.11.1992, the plaintiff had waived the right to claim possession of the property by virtue of forfeiture of tenancy. Reliance in support of this contention is placed on Section 112 of the Transfer of Property Act.

8) The learned Trial Court has decreed the suit holding that issuance of notice/letter dated 10.11.1992 and acceptance of rent thereafter will not amount to waiver of

right to claim eviction on account of forfeiture. Accordingly, the learned Trial Court has passed a decree for eviction against the defendant. This decree for eviction came to be challenged by the defendant by filing appeal. The learned Appellate Court has also confirmed the decree by dismissing the appeal. The learned Appellate Court has concurred with the view taken by the learned Trial Court that there was no waiver of forfeiture by the plaintiff merely by accepting the rent pursuant to notice/letter dated 10.11.1992 issued by him. The said concurrent decrees for eviction are subject matter of challenge in the present Second Appeal.

9) Mr. K. B. Zinjarde, learned Advocate for the appellant argues that the learned Courts have committed a serious error of law in holding that the appellant/tenant had forfeited his character of tenant by virtue of notice dated 15.09.1992. The contention is that the said notice/letter was not issued to the plaintiff at all and that it was issued to vendor of the plaintiff. He further argues that in order to claim adverse possession, the title of the true owner of the property must be disputed. He has placed reliance on the

judgment of the Hon'ble Supreme Court in the case of ***T. Anjanappa Vs. Somalingappa***, reported in ***AIR 2006(7) SCC 570***, particularly paragraph 15 thereof which reads as under:-

“15. "Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence ie. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. (See Annasaheb v. B.B. Patil, 1995(2) RRR 370 at 902).”

10) Mr. Zinjarde further places reliance on judgment of this Court in the case of ***Chandrashekhar S. Gagdgil Vs. Rameshprasad s/o Madhavprasad Shukla*** reported in ***2018 CJ (Bom) 637***, to contend that the act of the landlord demanding rent from the tenant after the alleged act of forfeiture amounts to waiver of forfeiture under Section 112 of the Transfer of Property Act. Mr. Zinjarde distinguishes the judgment in the case of ***Basasntlal Vs. State of U.P.***, reported in ***AIR 1981 SC 170***, which is relied upon by the learned Trial Court by contending that whereas in the said case the tenant had deposited the rent after forfeiture on his own volition without any demand of the landlord and that the landlord had stated that the rent was accepted by him under protest, in the present case the plaintiff had issued a letter demanding rent after alleged forfeiture. Mr. Zinjarde contends that both the learned Courts have erred in placing reliance on the said judgment without noticing the said distinguishing feature which goes to root of the matter.

11) Per contra, Mr. Sarda, learned Advocate for the respondent/plaintiff contends that in order to attract

forfeiture of tenancy under Section 111(g) a tenant must either renounce his character by setting up a title in third person or by claiming title in himself. The learned advocate contends that by disputing the title of plaintiff's vendor, the defendant had disputed the title of the plaintiff. He draws attention to the notice/letter dated 15.09.1992 and contends that the notice is issued only in view of the anticipated sale of the suit property by plaintiff's vendor to him. He also draws attention to a specific statement in the notice that the vendor does not have marketable title over the suit property and therefore, the purchaser i.e. the plaintiff will also not have any title over the suit property pursuant to the sale deed to be executed in his favour. The learned Advocate, therefore, contends that the title of plaintiff is also challenged. Apart from this, he contends that the defendant/tenant has undisputedly claimed ownership over the suit property by virtue of adverse possession and therefore has incurred forfeiture by claiming title in himself. The learned Advocate further contends that mere acceptance of rent will not amount to forfeiture in view of specific contention in the

subsequent letter dated 10.04.1993, and also because in both these letters dated 10.11.1992 and 10.04.1993 it is specifically stated that the ground of forfeiture is not given up and that the rent will be accepted without prejudice to the said contention.

12) Apart from the judgment in the matter of *Basantlal (supra)*, he places reliance on judgments of the Hon'ble Supreme Court in the matter of *Sarup Singh Gupta Vs. S. Jagdish Singh*, reported in *(2006) 4 SCC 205* and *C. Albert Morris Vs. K. Chandrasekaran*, reported in *(2006) 1 SCC 228*.

13) At the outset, in fairness Mr. Zinjarde does not dispute the settled legal proposition that in case, a tenant forfeits his character as a tenant, then protection of rent control law is not available. He has rightly restricted his submissions to the aspect of forfeiture and waiver of forfeiture.

14) As regards the contention that the notice/letter dated 15.09.1992, was not issued to the plaintiff,

therefore, it cannot be said that the defendant/tenant was claiming ownership by way of adverse possession, the same is liable to be rejected. The defendant has not only disputed the title of the vendor of the plaintiff, but has clearly stated that the proposed sale deed in favour of the plaintiff will not confer any title upon him. More importantly, the defendant has claimed in paragraph 3 of the notice that, although a registered gift deed was not executed, the oral gift was acted upon by the deceased owner, who had gifted the property to the defendant. Likewise, the defendant clearly asserted ownership over the tenanted premises by virtue of adverse possession. The contents of notice unequivocally indicate that the defendant/tenant had not only disputed the title of his landlord, but had claimed title in himself. For both these reasons, the defendant/tenant has clearly renounced his character as a tenant, as contemplated under Section 111(g)(2) of the Transfer of Property Act.

15) As regards waiver of the right to claim eviction on account of forfeiture, both the Courts have found that the demand for rent was without prejudice to the right of plaintiff to seek eviction on the ground of forfeiture. The Courts have found that in both the communications issued after notice/letter dated 19.09.1992 (notice of forfeiture), the plaintiff/landlord had clearly stated that he had not given up his right to claim eviction on account of forfeiture and that the rent was to be accepted without prejudice to the said right.

16) Perusal of paragraph 23 in the case of *Chandrashekhar Gadgil (supra)* will demonstrate that this Court had found that the landlord in the said case had initially issued a notice claiming forfeiture of tenancy in the year 1998 and thereafter, after a lapse of around 5 years from the date of initial notice another notice was issued referring to Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act. The suit was filed after the subsequent notice invoking provisions of the Rent Act

was issued. In this backdrop, this Court has held that the subsequent notice clearly amounted to waiver of forfeiture, as contemplated under Section 112 of the Transfer of Property Act. Perusal of the judgment does not indicate that the landlord in the said case had raised a demand for arrears of rent without prejudice to the earlier notice, as is done in the present case. Likewise, in the said case, the notice itself was issued invoking the provisions of the Rent Act and eviction was sought on the ground of failure on the part of the tenant to clear the arrears of rent, as also on the ground of *bona fide* need. The facts of the said case are clearly distinguishable.

17) As against this, the facts in the case of ***C. Albert Morris (supra)*** bear a close resemblance with the facts of the present case, where the landlord had indicated that the amount of rent tendered by the tenant was being accepted under protest. It will also be appropriate to refer to judgment in the case of ***Sarup Singh Gupta (supra)***, wherein the Hon'ble Supreme Court has held

that mere acceptance of rent would not amount to waiver. In the said case, the landlord had issued quit notices on 10.02.1979 and 17.03.1979. Suit for eviction was filed on 02.06.1979. For the intervening period, i.e., for the months of April and May, the landlord has accepted the rent. In this factual backdrop, issue arose before the Hon'ble Supreme Court as regards waiver of quit notice issued under Section 111(h) of the Transfer of Property Act. The Hon'ble Supreme Court has held that receipt of rent by itself will not amount to proof of waiver, having regard to the fact that shortly after issuing the two notices in the months of February and March 1979, the landlord had filed suit for eviction in June 1979. The act of the landlord in filing suit for eviction, despite receiving rent for the aforesaid period of two months was held by the Hon'ble Supreme Court to be a circumstance which established that there was no waiver of quit notice by the landlord. In the present case, the landlord had expressly stated that demand for rent was

made without prejudice to the claim of forfeiture. Suit for eviction is filed on 30.11.1993, shortly after the correspondence was made with respect to claim of forfeiture and subsequent demand for rent.

18) Having regard to the aforesaid, in the considered opinion of this Court, demand and acceptance of rent by the landlord will not amount to waiver of right to claim eviction on account of forfeiture of tenancy.

19) In view of the reasons recorded above, in the considered opinion of this Court, the impugned decrees for eviction do not warrant any interference. No substantial question of law arises for consideration, in the Second Appeal, Second Appeal is therefore **dismissed** with no order as to costs.

20) At this stage, Mr. Zinjarde, learned Advocate for the appellant, states that some reasonable time may be given to the appellant/tenant to vacate the suit property. Although the request is opposed, in the considered opinion of this Court, it will be appropriate to grant

reasonable time to vacate the property. Having regard to the fact that the suit property is a residential house of the appellant and further that the appellant is residing therein for a very long time, it will be appropriate that six months' time is granted to the appellant/tenant to vacate the suit property. The appellant/tenant shall vacate the suit property and handover peaceful vacant possession thereof to the respondent/landlord on or before **15.07.2026**.

21) Mr. Zinjarde, learned Advocate for the appellant/tenant, on instructions from the appellant/tenant, states that the suit property will be positively vacated and possession thereof will be handed over before **15.07.2026**. The statement is accepted as an undertaking to the Court.

(ROHIT W. JOSHI, J.)

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