

MHPU010065832015



Received on : 15.06.2015  
Registered on : 23.06.2015  
Decided on : 01.04.2026  
Duration : Y M D  
10 9 17

Exhibit No. 47.

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**BEFORE THE PRINCIPAL DISTRICT JUDGE, AT PUNE,**

**( Presided over by Mahendra K. Mahajan )**  
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**REGULAR CIVIL APPEAL NO. 331/2015**

**01. Maharashtra Gandhi Smarak Niddhi**

Registered PTR No. 290 (Pune)  
Gandhi Bhawan, Kothrud,  
Pune 411 038.

**02. Dr. Kumar Saptarshi**

Age : 72 years. Occu: Social worker,  
President of Maharashtra Gandhi  
Smarak Niddhi Trustee,  
Gandhi Bhawan, Kothrud,  
Pune 411 038.

**03. Prabhakar Wadi Bhaske (deceased)**

**Mr. Anwar Abdul Aziz Rayan**

Age : 59 years. Occu: Social worker,  
Secretary to Maharashtra Gandhi  
Smarak Niddhi Trustee,  
Address : A-2/18, Sarita Vaibhav,  
Sinhagad road, Pune 411 030.

**... Appellants.**  
(Ori. plaintiffs)

V/s

**Dr. Govind Jainarayan Jaiswal**

Age: 54 Occu : Nature care  
R/at : Nisargoupchar Ashram of

Maharashtra Gandhi  
Smarak Niddhi Trustee,  
Gandhi Bhawan, Kothrud,  
Pune 411 038.

... Respondent.  
(Ori. defendant)

.....  
Shri. K. E. Kadam, learned Advocate for appellants.  
Shri. A. M. Hartalkar, learned Advocate for respondent.  
.....

### **J U D G M E N T**

( Delivered on this 01<sup>st</sup> April 2026 )

This is an appeal filed by the appellants/original plaintiffs challenging the Judgment and Decree dated 30.04.2015 in Regular Civil Suit No. 169/2009 decided by 2<sup>nd</sup> Additional Judge, Small Causes Court, Pune thereby suit for possession was dismissed. (For convenience, the parties hereinafter are referred to by their original status in the suit i.e. Appellants as “Plaintiffs” and Respondent as “Defendant”).

**The facts giving rise to the present appeal are as under:-**

02. The plaintiff is a public trust. The plaintiff is owner of land 10 acres 7 R of S. No. 36/2, 36/1B in the jurisdiction of Pune Municipal Corporation. The property mentioned in column No.1A i.e. 2300 Sq.ft. and property in column No. 1B i.e. 2250 Sq.ft. are the properties of the plaintiffs. The property 1A was given on rent to the defendant @ Rs. 1/- per Sq.ft. i.e. Rs. 2,300/- p.m. for

running Nisargoupchar kendra. The defendant is defaulter. He is not paying the rent regularly. From 30.09.2005 till November 2008, there was outstanding amount of Rs. 1,25,548/-. A notice was issued to the defendant through Advocate Shri. M. V. Akolkar on 08.08.2008. The tenancy was terminated on 30.11.2008. Within 03 months, the rent was not deposited, therefore, he became a defaulter. Another ground of seeking vacant possession is 'without the consent of the plaintiff, defendant made the construction of 3800 Sq.ft. which is permanent nature'. He also constructed a food shop of 200 Sq.ft. So it is the change of user and permanent construction.

**03.** The defendant had sub-let the suit property to one Shri. Amit Bhasma who is residing there on coat basis and thereby defendant is earning Rs. 1,300/- p.m. from the sub-tenant. Defendant has also inducted another tenant Vijaykumar Bhalekar in the suit property. The suit property is also necessary for various activities to be conducted by the trust. So for bona fide and sufficient reason, possession of the suit property is necessary.

**04.** The defendant also made nuisance to the trustees. He filed the case against trustees before the Jt. Charity Commissioner. As the suit property was not used by the tenant for Nisargoupchar kendra, but it was used for another purposes, it was sub-let, there was permanent

construction, property is bona fide and reasonably required by the trust. Hence, suit was filed.

**05.** The defendant filed written statement at Exh. 29 and amended written statement at Exh. 29-A. Again additional W. S. Exh. 76 was filed. The defendant denied the area mentioned by the plaintiff given on rent. It is the contention that the defendant is a tenant of 3050 Sq.ft. property. Out of that area, 550 Sq.ft. is of 02 rooms, 2300 Sq.ft. is of shed and 200 Sq.ft. is a food stall. The open area of 1500 Sq.ft. is also in possession of the defendant. In the year 1985, the then Chairman Shri. Balasaheb Bharde had given 02 rooms of 550 Sq.ft. to the defendant on rent of Rs. 500/- p.m. In the year 1995, as per the map, 2300 Sq.ft. land was given to the defendant by Shri. Balasaheb Bharde on rent. That land was measured through Architect Shri. G. L. Khandekar. Accordingly, Shri. Bharde had issued a letter dated 09.06.1995 about that. The defendant has erected the shed on that. The rent was enhanced from Rs. 500/- to Rs. 2,500/- p.m. The then Secretary had given a letter dated 01.01.1995 to enhance the rent of Rs. 2,500/- p.m. and on 10.06.2000, said Shri. Bharde had issued a letter in respect of enhancement of monthly rent from 01.01.1995 in respect of 550 Sq.ft. land and 2300 Sq.ft. open land on rent to the defendant, and towards northern side, there is open space which goes to the public road. That open space is used for the access to the rented area.

**06.** On 10.05.2003, as per the 'No Objection Certificate' of Shri. Balasaheb Bharde, the food stall was erected in 200 Sq.ft. area. There was no any demand of rent for 200 Sq.ft. food stall. Thus, total 3050 Sq.ft. area with rent of Rs. 2,500/- p.m. is in possession of the defendant. Till August 2007, defendant had paid rent of Rs. 2,500/- p.m. Thereafter, plaintiff No.2 started dispute about rent. So application bearing M.A. No. 28/2009 for fixation of standard rent was filed, which is pending before the Small Causes Court, Pune. It is further mentioned that after receipt of summons in M. A. No. 28/2009 on 11.08.2009, under protest, the defendant has deposited the rent up to 03.11.2009 along with interest. The defendant has deposited Rs. 1,25,000/- and Rs. 1,00,000/-, totally Rs. 2,25,000/- by cheque which was more than the demanded amount. Rest of the facts were denied.

It is the contention that, in Nisargupchar kendra, some of the patients came and resided for treatment. Amit Bhasma and Vijaykumar Mahajan were the patients came for treatment. There is ample land available to the plaintiff – trust. 10 acres 7 R land is owned by the plaintiff – trust. There is no reasonable and bona fide need of the plaintiff. Filing complaint before the Jt. Charity Commissioner is not a nuisance. It is the legal recourse adopted by the defendant.

07. In the Trial Court, plaintiff No.2 Dr. Kumar Saptarshi–Chairman and Anwar Rajan–Secretary of the trust were examined from the side of the plaintiffs. The defendant examined himself. The Trial Court on the basis of evidence on record, dismissed the suit. Aggrieved by that, the present appeal.

08. Heard learned Advocates for the appellants / Ori. plaintiffs and respondents / Ori. defendant. Following points arise for determination and my findings thereon with reasons are as under:-

<b>Nos.</b>	<b>Points</b>	<b>Findings</b>
01	Do the plaintiffs prove that defendant is using the suit property No.1 (b) illegally?	In the negative.
02	Do the plaintiffs prove that defendant has carried out illegal construction without prior permission of the plaintiffs?	In the negative.
03	Do the plaintiffs prove that defendant sub-let the suit premises?	In the negative.
04	Do the plaintiffs prove that suit property is required for their bona fide and reasonable need?	In the negative.
05	To whom greater hardship will cause in case suit is decreed?	To the defendant
06	Do the plaintiffs prove that defendant has caused nuisance to them?	In the negative.

07	Do the plaintiffs prove that defendant is defaulter in payment of rent?	In the negative.
08	Whether the plaintiffs is entitled for possession of the suit property, to recover Rs. 1,05,140/- and mesne profits @ Rs.20,000/- p.m. from the defendant?	In the negative.
09	What order and decree?	Appeal is dismissed.

### REASONS

#### Submissions of the Advocates:

09. The learned Advocate for the appellants / plaintiffs submitted that the defendant is defaulter in payment of monthly rent to the plaintiff trust. After receipt of the suit summons, the defendant has not deposited the amount within 90 days. Notice was received on 11.08.2009 and the amount was deposited on 18.11.2009. The map shows permanent structure of shed of 02 rooms and office. The property was sub-let by the defendant. There was nuisance value at the hands of defendant, sub-tenancy was admitted in cross-examination. Plaintiffs also filed the written notes of argument at Exh.45 and relied on the following citations.

1. **Sri Ram Pasricha Vs. Jagannath (1976) 4 SCC 184** wherein it is held that:-

“tenant in possession cannot challenge landlord’s title”.

2. **Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones (2006) 3 SCC 91**, it is held that,

“tenant cannot indirectly challenge landlord’s title”.

**3. Santosh Hazari Vs. Purushottam Tiwari (2001) 3 SCC 179**, it is held that,

“Appellate Court can re-appreciate the evidence”.

**4. Madhukar Vs. Sangram (2001) 4 SCC 756**, it is held that:

“Appellate Court can interfere when material evidence ignored”.

**5. H. Siddiqui Vs. A. Ramalingam (2011) 4 SCC 240**, it is held that:

“Appellate Court must correct misreading of evidence”.

**6. Om Pal Vs. Anand Swarup (SC)(1988) 4 SCC 545**, it is held that:

“Permanent structure determined by nature  
intention, duration, investment”.

**7. Chordia Automobiles Vs. S. Moosa AIR 2000 SC 1880**  
it is held that:

“Strict compliance required after notice”

**10.** On the other hand, learned Advocate for the respondent / defendant submitted that suit was dismissed on 04 grounds. There is reasoned order of the trial Court. In respect of ground of defaulter in payment of rent, the plaintiff admitted that Rs. 2,25,000/- was paid by cheque on 03.11.2009. Description of the property is not proper, amendment was rejected. There are no details of sub-tenant. Complaint to the Legal Authority cannot be a nuisance value.

**As to point Nos. 1 to 8:-**

**12.** The evidence of the parties needs to be appreciated precisely. To avoid the repetition, all the points are taken together for discussion.

**13.** The evidence of P.W.1 and P.W.2 is the reiteration of the plaint in chief-examination. It has come in the cross-examination of P.W.1 Dr. Saptarshi that he is the President from 22.12.2006. Prior to him, Shri. Balasaheb Bharde was the Chirman. To promote Nisargupchar is the object of the trust. The earlier Chairman has rented the suit property to the defendant's father. The witness was shown the letter dated 09.06.1995. He stated that without perusing the record, he cannot say. In the year 1995, the suit property was given on rent. He does not know that as per letter dated 10.06.2000, the property was rented for 25 years. He does not know that the open land was given to the defendant for using without rent. He admitted the receipts filed along with Exh.26. He does not know that on 10.05.2003, Shri. Balasaheb Bharde had given permission to start the food stall. He does not know how many days, that boy was residing. He does not know that as per letter dated 09.06.1995, Shri. Balasaheb Bharde had given 2300 Sq.ft. open land for 05 years. He also does not know that rent of Rs. 2,500/- p.m. was agreed upon as per letter dated 11.09.1995.

**14.** The second witness also does not know how much area was given on rent in the year 1985. After 1995, area was extended by Shri. Balasaheb Bharde. Rest of the facts as per Written Statement were denied by the witnesses.

**15.** The defendant in his chief examination proved some documents i.e. letter dated 09.06.1995. It is at Exh. 105. There is signature of Shri. Balasaheb Bharde. The letter dated 11.09.1995 signed by Secretary is at Exh.106. The letter dated 10.06.2000 was issued by Shri. Balasaheb Bharde is at Exh. 107, No Objection Certificate dated 10.05.2003 was issued by Shri. Balasaheb Bharde is at Exh. 108, letter dated 07.12.2004 was issued by Secretary Shri. Pund is at Exh.109. He also proved the receipts Exh.110/1 to 110/70.

**16.** I have gone through the documents at Exhs. 105, 106 and 107. Those documents were signed by Chairman Shri. Balasaheb Bharde and Secretary. Exh. 105 and Exh. 107 clearly shows that beside 550 Sq.ft., 2300 Sq.ft. open land was also given to the defendant and that land was measured by the Architect Shri. G. L. Khandekar. That land was given for 25 years. It is also reflects from those receipts that after getting permission from the Asstt. Charity Commissioner, agreement would be executed. Exh. 106 clearly shows that, Rs. 2,500/- p.m. was agreed upon

to be deposited by the defendant. Exh.104 is the calculation of the rent @ Rs. 2,500/- p.m. The receipts Exh. 110/1 to 110/70 clearly reveals that the earlier rent was Rs. 500/- p.m. and thereafter rent was Rs. 2,500/- p.m. and those were accepted by the trust and notices were issued. From the evidence of PW.1 Saptarshi and second witness Anwar Rajan, it is seen that they were having no knowledge when the suit property was given to the defendant on rent, what was the earlier rent amount and whether 2300 Sq.ft. open land was given to the defendant by Shri. Bharde. The documents which were discussed above were referred by the defendant's Advocate to them, but they stated that they could not comment upon those documents without verifying the record.

**17.** In cross-examination of the defendant, the defendant was suggested that those documents Exh.104 to 107 are forged and fabricated. The best witness to prove that there was no signature of Shri. Bharde or the then Secretary on those documents. Shri. Bharde and Secretary should have been examined by the trust, but after the death of Shri. Bharde, the then Secretary who issued rent receipts were not examined. Shri. Bharde was the Chairman is an admitted fact. It is also admitted fact that Shri. Bharde had given the property of 550 Sq.ft. initially to the defendant, but later-on, 2300 Sq.ft. land was given by Shri. Bharde. There is a document in that regard. The plaintiff, the

Chairman of the trust must have knowledge about such facts, but in the plaint, there is no whisper about any letter issued by Shri. Bharde to the defendant in respect of 2300 Sq.ft. land. There is no any whisper in the plaint, how and when rent was enhanced from Rs.500/- p.m. to Rs. 2,500/- p.m. It is probable that because of 2300 Sq.ft. land, the rent was enhanced. Thus, from the evidence on record, case of defendant is more probable. The description given by the plaintiff about 2300 Sq.ft. land is defective. The trial Court observed that although the property in clause No. 1A and 1B are shown different, the four boundaries are the same. It is rightly observed by the trial Court that at-least one boundary of both the lands cannot be the same. Three boundaries can be the same, but one boundary cannot be the same

**18.** It is the contention that, there is permanent construction of 3800 Sq.ft. and there is a shop of 200 Sq.ft. without the consent of the plaintiff. If there is tenancy of 2300 Sq.ft. as per 1A and 2250 Sq.ft. is encroached, on what area of 3800 Sq.ft. permanent construction, the plaintiff should have proved. About 200 Sq.ft. shop, it is the contention of the defendant that it was with consent of Shri. Bharde and without rent. The probability is in favour of the defendant, because at the time of erection of that stall, no any notice was sent by the plaintiff, no restriction was made by the trust about erection of the shop.

**19.** The object of the trust is to promote Nisargaupchar Kendra. The defendant is running Nisargaupchar Kendra. It is but obvious that for taking treatment in Nisargaupchar kendra, some of the patients have to reside there, the charges are to be collected by the defendant. If the suit property is rented out for Nisargaupchar kendra, how the plaintiff can object for giving the treatment of Nisargaupchar to the patients on residential basis. The defendant has come with a specific case that those alleged sub-tenants were the patients who had taken treatment. Looking to the nature of tenancy and profession of Nisargaupchar, it is probable.

**20.** Every person has a right to raise grievance before appropriate forum. Filing of the complaint by the defendant before the Jt. Charity Commissioner about the trustees or the trust cannot be said to be a nuisance value and harassing trustees of the trust. Dismissal of that complaint or imposition of costs are the aspects of proceeding of the Charity Commissioner. That cannot be a ground to hold that defendant is at fault. The defendant has challenged that order before the District Court and that matter is sub-judiced.

**21.** So far as ground of defaulter is concerned, the trial Court has observed that, the plaintiff has demanded Rs. 1,05,040/-. As per the report of Nazir (Exh.111), from 18.11.2009, Rs. 3,90,800/- were deposited and out of that

amount, Rs.1,58,300/- were paid to the plaintiff. Learned Advocate for the plaintiff emphasized on the observations of the trial court in the judgment in which it is mentioned that on 18.11.2009, defendant deposited Rs. 2,25,000/- and thus amount is deposited after expiry of three months statutory period. In that regard, the defendant has relied on the evidence of the plaintiff.

Shri. Saptarshi in his cross-examination admitted that on 03.11.2009, Rs. 2,25,000/- along with 15% interest was deposited by two cheques. He further admitted that during the pendency of suit, defendant is depositing the rent regularly and there is no any outstanding amount towards the defendant. In view of such fact, there is no merit in the argument of learned Advocate for the plaintiffs about payment of Rs. 2,25,000/- was on 18.11.2009. Actually that amount was deposited on 03.11.2009 within 03 months.

**22.** It has come in the pleading itself that plaintiff is the owner of 10 acres 7 R land. In possession of the defendant, there is around 3000 Sq.ft. land which is small piece of land of total 10 acres 7 R land. It is true that being a trust, for social activities, to give benefit to general public, the trust is interested to start number of activities as mentioned in the plaint and as deposed by the witnesses. But it has to be seen whether for those activities, this land of 3000 Sq.ft. is bona fide and reasonably required by the

plaintiff. When the defendant is running Nisargupchar kendra at that place since so many years, it is very difficult for the defendant to shift that kendra elsewhere.

It is also important to note that once earlier 550 Sq.ft. constructed land, thereafter 2300 Sq.ft. open land was given to the defendant for running Nisargupchar kendra, some sheds were erected. Defendant was not restricted about the erection of the shed by earlier President. In the light of no knowledge to the witnesses about land was handed over by Shri. Bharde, how it can be said that the construction of shed is unauthorized and without permission. Neither at the time of erection of shed nor thereafter while running the centre, any notice was given about unauthorized shed erected by the defendant. So considering all aspects, it will cause more hardship to the defendant if the property is decreed to be vacated and possession is decreed to be handed over to the plaintiff. Therefore, plaintiff is also not entitled for the land for bona fide and reasonable need of the trust.

**23.** Having gone through the Judgment of the Trial Court, I do not see any perversity or illegality. During trial, the appellant / plaintiff filed an application (Exh. 43) for submitting the documents. The respondent / defendant has objected the application to file those documents on record. I have gone through those documents. Those documents for the period from 07.08.2020 to 01.03.2026. Those are of

subsequent incidents. Those are not required to be taken on record for deciding the suit. The suit is to be decided on the basis of pleadings in the plaint and written statement. If subsequent cause of action arises, then the plaintiff can file a subsequent suit for those newly cause of action. All these documents are in respect of subsequent activities. Without the amendment in the plaint, the evidence about this subsequent activities cannot be permitted to be taken on record. Even it is not explained why these documents of 2020-2022 are not filed as early as possible and why those were filed at the fag end of the decision of the appeal. Therefore, application (Exh. 43) is sans merit and accordingly, it is rejected. My findings to point Nos. 1 to 4 and 6 to 8 are in the negative, point No. 5 in favour of defendant and to answer point No. 9, following order is passed:-

**:ORDER:**

01. The Appeal is dismissed.
02. In the peculiar facts and circumstances, both the parties to bear their own costs.
03. Record and Proceedings be sent back to the Trial Court.

Decree be drawn up accordingly.

(Judgment is dictated and declared in open Court.)

Date: 01.04.2026

( Mahendra K. Mahajan )  
Principal District Judge,  
Pune.