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CNR No. : MHSI01-000853-2015

Exhibit No. : 34

IN THE COURT OF ADHOC DISTRICT JUDGE-1, SINDHUDURG

AT OROS, DISTRICT SINDHUDURG

(Presided over by Shri. S. S. Indalkar)

REGULAR CIVIL APPEAL NO. 166 OF 2015

Shri. Ashok Tukaram Kadu,
Age 63 Yrs., Occu.: - Trade,
R/o. Bhandari High School Road,
Malvan, Tal. Malvan, Dist. Sindhudurg.

APPELLANT
(Ori. Plaintiff)

Vs.

1. Shri. Baba @ Shrikrishna Vitthal Mestry,
(Dead) (Abated)

2. Shri. Aapi @ Milind Vitthal Mestry,
Age 54 Yrs., Occu.: - Carpenter,
R/o. Mechanic Road, Malvan,
Tal. Malvan, Dist. Sindhudurg.

RESPONDENTS
(Ori. Defendants)

Advocates for the Parties –

For Appellant - Shri. V. P. Chindarkar
For Respondent No. 2 - Shri. S. S. Gavankar

JUDGMENT
(Delivered on 14th July 2026)

1. This is the appeal filed under Order XLI, Rule 1 and 2, r/w. Section 96 of the Code of Civil Procedure, 1908 (In short C.P.C.), against the judgment and decree in Regular Civil Suit No. 35/2006, dated 31/08/2015, passed by the Ld. Civil Judge (J.D.), Malvan. Through, impugned judgment and decree, Ld. Trial Judge has dismissed the suit of the plaintiff.

2. Being aggrieved and dissatisfied with the said judgment and decree, present appellant (original plaintiff) has preferred this appeal. For the sake of convenience, parties are referred by their original nomenclature henceforth.

3. The facts gives rise to decide this appeal, in brief, are as under:-

Plaintiff's case -

The house property bearing No. 1162, is situated at village Malvan, Tal. Malvan, Dist. Sindhudurg. (Hereinafter referred as '**suit house**' for the sake of convenience.)

4. It is the contention of plaintiff that, the suit house is in possession of the family of plaintiff from his father as a tenant under the Maharashtra Rent Control Act. The rent of said house was Rs.10/- per month. Plaintiff belongs from the Tambat community (coppersmith) and use to make the utensils. Plaintiff was using the suit house for repair and sell of utensils. The suit house is stand up on the four wooden poles and four sides are surrounded by tin and wooden planks. The tin shed and

wooden planks are become old and broken. The ground of suit house become uneven and damaged. The door and windows are collapsed. Therefore, there is possibility of collapsed due to the wind and in the rainy season. Therefore, said suit house become dangerous to the life and property.

5. It is further contention of the plaintiff that, plaintiff made a request time to time to defendants for repair of the suit house. But, defendants did not pay heed. Therefore, ultimately, plaintiff issued notice through the Advocate, dated 03/03/2006, calling upon to make a repair, failing which, plaintiff will be carried out the repair. The defendants have replied the said notice on 14/03/2006 and denied the tenancy right of the plaintiff in the suit house. The suit house is governed under the Maharashtra Rent Control Act. The suit house is not a habitable. Therefore, it is the responsibility of the defendants to make a repair of the suit house by their own expenses. The defendants have failed in their duty. Therefore, plaintiff has filed the suit against defendants for perpetual injunction and declaration of monthly tenant in the suit house. Hence, he prayed for decree of the suit.

Defendants' case -

6. Defendant No. 1 and 2 have filed their written statement at Exhibits 17 and 55. It is the contention of defendants that, they have denied the tenancy right of plaintiff in the suit house. The suit house is since beginning is temporary structure made out without wall and covered by gunny bags. The entire house was not in possession of plaintiff, but, in the some part, the defendants are using to keep their articles. The suit house was permitted to use as a licensee during the month of March, April and May, for three months, to the brother of plaintiff, namely, Ganesh

Kadu. Defendants have permitted to use him without any consideration for the temporary period as a licensee. But, defendants were used to ingress and egress in the suit house. Shri. Ramesh Kadu died in the year 2000. Thereafter, there was no any right of plaintiff in the suit house. Plaintiff is not doing the business of selling of utensils. Plaintiff is not having any permission to do the business. Plaintiff is having house bearing No. 1719 at Malvan. This Court has no jurisdiction to entertain the subject matter. Hence, they prayed that, the suit may be dismissed.

7. After considering the evidence and rival submissions before Court, the Ld. Trial Court has dismissed the suit of the plaintiff.

8. Being aggrieved by the said judgment and decree, the plaintiff has preferred this appeal against the impugned judgment and decree on the following grounds:-

(i) The impugned judgment and decree passed by the Ld. Trial Court is bad in law.

(ii) The Ld. Trial Court has not considered properly the oral and documentary evidence on record.

(iii) The Ld. Trial Court has not considered the provisions contained in the Maharashtra Rent Control Act, 1999, regarding the tenancy, the bounden duty of the landlord to keep the tenanted premises in tenantable condition and duty of the landlord to repair the premises after notice served by the tenant within reasonable period and if the premises are not repaired by the landlord, then, the statutory right obtained by the tenant to repair the premises by obtaining the decree of permanent injunction against the landlord.

(iv) The Ld. Trial Court has not considered that, the provision of Section 90 of the Evidence Act are enacted to circumvent (avoid) the situation when a person is not in a position to attend the Court to lead evidence due to death.

(v) The issues are not properly framed. The inference drawn, reasons assigned and conclusions arrived at, are wrong and against the evidence on record. Hence, he preferred appeal against the judgment and order for above mentioned grounds.

9. From the rival pleadings of the parties, the Ld. Trial Court has framed necessary issues at Exh. 59. Before Ld. Trial Court, the plaintiff Shri. Ashok Tukaram Kadu, has adduced his evidence by way of affidavit (P.W.1) at Exh. 76. Plaintiff has also examined witness Shri. Girish Jayawant Girkar (P.W.2) at Exh. 120. On the other hand, on behalf of defendants, defendant No. 1, Shri. Shrikrishna @ Baba Vitthal Mestry, has examined himself by way of affidavit (D.W.1) at Exh. 124. Defendants have also examined witness Shri. Milind Vitthal Mestry (D.W.2) at Exh. 139. The plaintiff and defendants have relied on various documents.

10. After hearing both parties at length, perusal of documents in the paper book, following points arise for determination, against which I have recorded my findings thereon with reasons as below:-

Sr. No.	POINTS	FINDINGS
1.	Does plaintiff proves that, he is a tenant of defendants in the suit house ?	No.
2.	Whether the plaintiff is entitled for the relief of perpetual injunction against	

	defendants, as prayed ?	No.
3.	Whether the impugned judgment and decree call for any interference ?	No.
4.	What order ?	As per final order.

:- REASONS :-

AS TO POINT NO. 1 AND 2 :-

11. As both these points are interconnected and based on the same set of facts and evidence, thereby, I propose to club them together for discussion.

12. In order to prove the factual aspect that, plaintiff is tenant of the suit house, plaintiff has relied on the oral as well as documentary evidence. Plaintiff has adduced his oral evidence stating that, the family of plaintiff is tenant in the suit house. Per contra, defendants have denied that, the plaintiff is tenant in the suit house. On this background, it is incumbent upon the plaintiff to prove that, he is a tenant in the suit house.

13. Firstly, it is necessary to scrutinize the oral evidence of the plaintiff. There is no any direct evidence between plaintiff and defendants to prove the factual aspect of tenancy. There is no any agreement on record to prove the tenancy in the suit house. On this background, the plaintiff has adduced the oral evidence at Exh. 76 and reiterated the facts stated in the plaint. In the cross-examination in Para. No. 24, plaintiff has admitted that, he was not tenant in the suit house. The father or forefather of defendants have not given the suit house as a tenant to him. Defendants also not given the suit house as a tenant to his father or forefather. Plaintiff

has not paid any rent to defendants or defendants did not issue the rent receipts. The father of plaintiff or grandfather did not give the rent to the defendants. After perusal of the searching cross-examination in regards to the right of tenancy, it reveals that, there is no existence of right of tenancy between plaintiff, father of plaintiff or forefather of plaintiff with the defendants or father and forefather of defendants. Therefore, considering the oral evidence of plaintiff, the plaintiff has unable to prove the factual aspect that, he or his family is having tenancy right in the suit house.

14. Now, turning to the documentary evidence on record. The documents at Exhibits 109, 110 are the only documents filed by the plaintiff. After perusal of the said documents, the plaintiff is unable to prove the signature of the father of defendants, who has accepted the rent. Therefore, said diary at Exhibits 109 and 110 are not sufficient to support the contention of plaintiff about the tenancy right in the suit house. Except this, there is no any documentary evidence duly proved by the plaintiff in order to support his contention about the tenancy right. Therefore, from all above discussion, the plaintiff is unable to prove and satisfy that, the plaintiff is having tenancy right in the suit house. As per the submission of the Ld. Advocate for respondents and relevant documents filed on record, it reveals that, subject matter of dispute i.e. the suit house is collapsed and not in existence. Consequence of it, the plaintiff is not entitled for any relief against the defendants. Therefore, in view of above discussion, this Court answer Point No. 1 and 2, in 'negative'.

AS TO POINT NO. 3 :-

15. In view of above discussion, the plaintiff has failed to prove that, he has having the right of tenancy in the suit house. Hence, he is not entitled for any declaration and perpetual injunction against the

defendants, as prayed. Therefore, the reasons given, inference drawn and observations mentioned by the Ld. Trial Court in the impugned judgment, are found to be proper, correct and legal. Therefore, there is no reason to interfere in the judgment and decree. Hence, this Court answer Point No. 3, in 'negative'.

AS TO POINT NO. 4 :-

16. In answer to Point No. 4, the Court pass the following order:-

-. ORDER :-

1. The appeal is dismissed with costs.
2. The impugned judgment and decree passed in Regular Civil Suit No. 35/2006, by the Ld. Civil Judge (J.D.), Malvan, on 31/08/2015, stands confirmed.
3. Decree be drawn up accordingly.
4. All concerned to act upon the digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this Court. In this regard, attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake Vs. Krushna Dhake**, MANU/MH0285/2018.

(Dictated and pronounced in open Court.)

Sindhudurg-Oros,
Date - 14/07/2026

(S. S. Indalkar)
Adhoc District Judge-1,
Sindhudurg-Oros.