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Decided on : 28.03.2016

Duration : Y. M. D.
04 05 09**IN THE COURT OF 2nd ADDL. JUDGE SMALL CAUSES COURT &****JT. CIVIL JUDGE S.D., PUNE, AT : PUNE.****AT : PUNE.****(Presided over by N.G. Shukla)****Spl.Civil Suit No.2077/2011.****Exh.No.****PLAINTIFF:** 1] **Shri.Rokdoba Devasthan Trust,**
Registered Public Charitable Trust,
Office – 558, Shivajinagar, Pune.**Through it's Chairman,****Shri. Sudhakar Mohan Sandbhor,**
Age – 72 years, Occu. - Retired,
R/at – 318, Shivajinagar Gavthan,
Pune – 411 005.**Versus****DEFENDANTS :** 1] **Shri. Dnyaneshwar Bhiku Bhujbal,**
Age – 70 years, Occu. - Business,
R/at – 11, Avantika Apartment,
Mukundnagar, Pune – 411 037.**Through his legal representatives;****1A] Shri. Shrikant Dnyaneshwar Bhujbal,**
Age – 54 years, Occu. - Service,**1B] Shri. Vijay Dnyaneshwar Bhujbal,**
Age – 50 years, Occu. - Service,
Both R/at – 11, Avantika Apartment,
Mukundnagar, Pune – 411 037.-----
Shri.A.D.Javir, Advocate for the Plaintiff.Shri.S.K.Pashankar, Advocate for Defendants.

**Suit For Recovery of Possession,
Permanent Injunction and Damages:**

J U D G M E N T

(Delivered on : 28.03.2016)

1] This suit is filed for recovery of possession and declaration that, sale deed of the suit property dated 2.11.1995 is not binding on plaintiffs and permanent injunction and damages of Rs.5,00,000/-.

2] Plaintiff's case in brief is as below :

Plaintiff is a Public Trust and Chairman of the Trust has filed present suit as other trustees have passed resolution authorising him to file present suit. Suit property is one shop adm. 480 sq. ft., bearing CTS No.558, well described in plaint para no.1. It is owned by plaintiff-trust. Suit property was let out to one Smt. Radhabai Ramprasad Pardeshi on monthly rent of Rs.30/- and she was running flour mill and masala mill by name and style, "Vijaya Flour Mill" in the suit premises. Afterwards the rent was increased upto Rs.60/- per month. Rent was paid regularly to plaintiff-trust upto March 2008. Neither Radhabai Pardeshi nor her legal heirs after her death, paid the rent after March 2008.

3] It is further contention of plaintiff that, defendant Dnyaneshwar was servant of Radhabai Pardeshi working in the said flour mill. He was paying rent on behalf of Radhabai. She had also told to trustees of plaintiff that, defendant Dnyaneshwar was looking towards the business of flour mill in the suit property. Plaintiffs came to know that, Radhabai died and defendant was working as a servant in the flour mill since 1995-96. Plaintiffs obtained information in respect of license under Shop Act of the business in the suit property from the office of Labour Commissioner on 5.5.2011. Plaintiffs revealed in the said information that, Radhabai Pardeshi sold the business of flour mill along with tenancy rights in the suit premises to defendant Dyaneshwar Bhujbal vide sale deed dated

2.11.1995 bearing no.5709/1995.

4] It is further contention of plaintiffs that, Smt. Radhabai Pardeshi being tenant had no right to transfer tenancy rights in the suit premises to defendant. She had transferred tenancy rights along with business and good will of the flour mill without consent of plaintiff and illegally handed over possession of the suit property to defendant. Therefore, said sale deed is illegal and not binding on the plaintiff. Possession of defendant over the suit premises is illegal. Defendant is carrying business of flour mill in the suit premises illegally by changing the name as, "M/s Shri.Sadguru Flour Mill and Masala Mill". Because of carrying business illegally by the defendant, plaintiffs are sustaining huge loss of Rs.20,000/- per month. Plaintiff issued notice to defendant on 6.8.2011 calling defendant to hand over possession of the suit premises. Defendant issued false reply of the said notice and declined to hand over possession. For these reasons, plaintiff is constrained to file present suit for recovery of possession of suit premises, declaring the sale deed not binding on plaintiff, damages of Rs.5,00,000/- and mesne profits and permanent injunction restraining defendant from transferring the suit premises to any third person.

5] Defendant filed written statement at Exh.20 and resisted claim and contention in the plaint. During pendency of suit, original defendant died and his legal representatives brought on record who adopted the same written statement. Defendants admitted most of the facts in the plaint but denied that, the sale deed is illegal and possession of defendant over the suit premises and business carrying by him is illegal. It is contention of defendants that, all the trustees are not made parties to the suit. Plaintiff being a public trust, all the trustees ought to have filed present suit. Suit filed by one trustee is not maintainable. Therefore, the suit is bad for non joinder of necessary party and liable to be dismissed.

6] It is further contention of defendant that, Radhabai Pardeshi transferred her tenancy rights i.e. interest in the suit premises along with running business, stock in trade and good will of the business of flour mill in the suit premises to defendant vide sale deed dated 2.11.1995. Said sale deed was executed as per provisions of Section 15 of Bombay Rent Act, 1947. Thereby, defendant has acquired tenancy rights and he became tenant in the suit premises. Radhabai Pardeshi had informed the plaintiff this fact by her letter dated 20.11.1995. Defendant has also paid rent regularly to the plaintiff who had issued rent receipts in the name of old tenant by accepting rent from these defendants. Thus, the relationship in between Plaintiff as landlord and defendant as tenant has been existed. Hence, this court has no jurisdiction to try this suit. It is further contention of defendant that, he is not trespasser in the suit premises. Defendant has license for running business of flour and masala mill since the year 1995. Defendant became tenant by virtue of sale deed dated 2.11.1995 which was executed by Radhabai as tenant. She has right to transfer running business along with stock in trade, good will and incidental tenancy rights U/sec.15 of Bombay Rent Act 1947. Therefore, sale deed is binding upon plaintiff. For these reasons, defendant prayed to dismiss the suit.

7] On the basis of above rival contentions, I have framed following issues at Exh.24. After appreciation of evidence, my finding with reasons to the said issues are noted as below :

<u>Issues</u>	<u>Findings</u>
1] Does plaintiff prove that, defendant has illegally in possession of suit property ?	.. In the negative.
2] Does plaintiff prove that, deceased Radhabai Pardeshi had illegally transferred tenancy rights by way of sale deed dtd. 2.11.1995 in favour of defendant ?	.. In the negative.

- 3] Is the suit barred for non joinder of
necessary parties ? .. In the negative.
- 4] Is the suit within limitation ? .. In the negative.
- 4A] Whether this court has jurisdiction to
try and entertain this suit in view of
pleading regarding relationship of landlord
tenant in the written statement ? .. in the negative.
- 5] Are plaintiffs entitled for reliefs claimed ? .. In the negative.
- 6] What order and decree ? .. Suit is dismissed
with costs.

Reasons

8] On behalf of Plaintiff-Trust, it's Chairman Sudhakar Mohan Sandbhor adduced evidence on affidavit at Exh.30 and plaintiff also examined P.W.2 Shop Inspector Prashant Wanjari at Exh.65. Plaintiff closed evidence vide pursis Exh.70. Defendant no.1A Shrikant Dnyaneshwar Bhujbal adduced his evidence by way of affidavit at Exh.72. Defendant closed evidence vide pursis at Exh.77. Documents relied by both the parties are referred in forth coming paragraphs. I have heard learned advocate Shri. Javir for plaintiff and learned advocate Shri.Pashankar for defendants.

As to Issues No.1 and 2:

9] It appears from pleadings that, defendant has admitted most of the facts pleaded in the plaint in his written statement. The material aspect of the matter is the execution of sale deed by Radhabai in favour of deceased defendant Dnyaneshwar Bhujbal on 2.11.1995. Certified copy of said sale deed is placed on record at Exh.41. It is evident from Exh.41 that, plaintiff-trust is not consenting party to the said sale deed. It is also evident from Exh.41 that, Deceased Radhabai transferred running business of flour mill along with good will, stock in trade and tenancy rights in favour of

defendant by the said sale deed. Main contention of plaintiff is that, Radhabai transferred tenancy rights i.e. her interest in the suit premises without consent of plaintiff and she had no right to transfer tenancy rights to defendant without consent of plaintiff. Therefore, said sale deed is illegal.

10] Learned advocate Shri. Javir for plaintiff argued that, sale deed is without consent of plaintiff. Admittedly, Radhabai was tenant and she had no right to execute said sale deed without consent of plaintiff. Learned advocate further argued that, D.W.1 Shrikant admitted in cross-examination that, consent of plaintiff trust was not obtained by his father at the time of execution of sale deed. Learned advocate further argued that, as per provision of Section 26 of Maharashtra Rent Control Act 1999, tenant has no right to transfer interest in the tenanted premises without consent of landlord or in absence of contract in between tenant and landlord in that effect. The sale deed dated 2.11.1995 is without consent of landlord plaintiff-trust and therefore, according to him, said sale deed is illegal and not binding on plaintiff. Defendant is in possession of suit premises by virtue of illegal sale deed and his possession is also illegal and he is nothing but trespasser in the suit premises. Learned advocate further argued that, Section 15 of Bombay Rent Act 1947 and notification issued U/sec.15(1) of the Bombay Rent Act is not applicable in the present case. According to him, said notification was issued for the purpose of securing the loan transaction for which the tenanted premises were given as mortgage. Learned advocate relied upon the following rulings;

- 1] **Shantaram Vithoba Pathare Vs. Ramchandra Ganesh Chitale and others, 2009(1) Mh.L.J.**
- 2] **Veetrag Investments & Finance Co. Vs. Premier Brass & Metal Works Pvt. Ltd., 2002(4) Bom.C.R.169.**
- 3] **Hukumchand Mishrilal Jain and others Vs. Sushilabai Champalal**

Agrawal and others, 2007(4) Mh.L.J.379.

11] Learned advocate Shri. Pashankar for defendant argued that, admittedly the sale deed dated 2.11.1995 in between Radhabai and defendant was executed prior to coming into force the Maharashtra Rent Control Act, 1999. Hence, Section 26 of the said Act is not applicable to the present transaction. According to him, provisions of Bombay Rent Act, 1947 is applicable to the said transaction. Proviso of Section 15(1) empowers the State Government to issue notification authorising tenants to transfer running business along with good will, stock-in-trade and tenancy rights in favour of third person. No consent of landlord was required for the said transfer. Learned advocate Shri. Pashankar submitted that, section 15 of the Bombay Rent Act, 1947 has given authority to the tenant to transfer the business in the suit premises along with tenancy rights and in accordance with that, tenant Radhabai had executed sale deed dated 2.11.1995 in favour of defendant. Therefore, according to him, sale deed is not illegal and binding upon plaintiff. Learned advocate further argued that, defendant became tenant of the suit property by virtue of said sale deed. Thus, he is not trespasser in the suit premises. Learned advocate relied upon on the ruling in **Swastik Rubber Products Ltd. And another Vs. Vasantrao Mahadeo Dhatingan, 2005(2) Mh.L.J. 28.**

12] I have considered submission and perused the rulings. Before coming to the factual aspects, the rulings relied by both the parties are required to be considered. Rulings in **Shantaram Pathare's** case and **Hukumchand Jain's** case (relied by plaintiff), are on the point of subletting. Plaintiff's have not contended the defendant as sub-tenant. In **Shantaram Pathare's** case the point for consideration was subletting by tenant to another person and no case of transfer of business was under consideration. In **Hukumchand Jain's** case, point for consideration was creation of sub-tenancy and not transfer of business. Though in that case,

provision of Section 15 of Bombay Rent Act was considered, but it appears that, notification issued by State Government under the proviso of section 15(1) of Bombay Rent Act was not considered in that case. Similarly, in **Shantaram Pathare's** case, no such notification was considered. Therefore, in my view, with due respect, said two rulings are not applicable in the present case.

13] So far as ruling in **Veetrag's** case (cited supra) is concerned, in that case, though submission was advanced by referring section 26 of the Rent Act, 1999 and the court had considered the point of notification under the provision of Section 26 of the Rent Act, 1999, but transaction of attachment and sale of the tenanted premises by the court in execution proceeding was under consideration in that case. Secondly, attachment and sale of the tenanted premises in that case was taken place after coming into force the provisions of Maharashtra Rent Control Act, 1999. Therefore, the Hon'ble High Court had considered provision of section 26 of the Maharashtra Rent Control Act. In the case in hand, transaction of transfer of tenanted premises was taken place prior to 1995 i.e. prior to commencement of Maharashtra Rent Control Act, 1999. Hence, ruling in **Veetrag's** case is also not helpful to plaintiff in the present case.

14] Ruling in **Swastik Rubber's** case (cited by defendant) is important and applicable in the present case. In that case also, there was transfer of the interest in the demised premises along with business, goodwill and stock-in-trad. Hon'ble High Court considered the notification issued by State Government U/sec.15(1) of Bombay Rent Act and hold that, if a tenant transfers his interest in the demises premises together with his entire business as a going concern, as contemplated by notification, then the transaction would not be contrary to the section 15 of the Act and in such a case, the landlord will not be entitled to a decree of eviction against such tenants U/sec.13(1)(c) of the Act.

15] Though ruling in **Swastik Rubber's** case is on the point of eviction U/sec.13(1)(c) of the Old Act, but the ratio laid down in that ruling is regarding validity of transfer of the business along with interest of the tenant in the demised premises U/sec.15(1) of Bombay Rent Act. Therefore, this ruling is applicable in the present case. One copy of commentary of section 15 is placed on record by learned advocate for plaintiff. It shows that, State Government had issued notification U/sec.15(1) of Bombay Rent Act on 12.5.1948 and 19.9.1948. Purpose of said notifications was to extend the provision of Section 15(1) of the Rent Act to the areas specifies in Part II of the Bombay Rent Act for transfers and assignments by lessees of their interest in the lease hold premises to the extent of transfer or assignment incidental to the sale of a business as a going concern together with a stock in trade and good will thereof, provided that the transfer or assignment is of the entire interest of the transferor or assignor in such leasehold premises together with a business and stock-in-trade and good will thereof. This purpose of assignment appears to be extracted from the notification dated 21.9.1948. Similar view is taken by Hon'ble High Court in **Swastik Rubber's** case for holding the transfer of business along with tenancy rights as valid.

16] In view of ratio laid down in **Swastik Rubber's** case, if the sale deed dated 2.11.1995 executed by Radhabai in favour of deceased defendant Dnyaneshwar is considered, it becomes clear that, tenant Radhabai had validly executed sale deed and thereby transferred running business concern of flour mill along with stock-in-trade, goodwill and her tenancy rights in the suit premises. In view of proviso of section 15(1) of Bombay Rent Act and notification issued by State Government on 21.9.1948, no consent of landlord was required for transfer of business, good will and tenancy rights by the tenant in favour of third person. Tenant was empowered under proviso of section 15(1) of Bombay Rent Act to transfer her tenancy rights along with business, good will etc. in

favour of third person. Therefore, I am of the view that, sale deed dated 2.11.1948 is valid and thereby the tenancy rights alongwith running business concern of flour mill and good will etc. are validly transferred by deceased Radhabai in favour of deceased Dnyaneshwar Bhujbal. Hence, I come to conclusion that, defendant Dnyaneshwar and after his death, present defendants no.1A and 1B are in legal possession of suit premises and business therein. They cannot be hold as trespasser in the suit premises. Defendant had validly transferred license of flour mill under the Shop Act in his name on the basis of sale deed dated 2.11.1948. Hence, I hold that, plaintiff failed to prove that, defendant is trespasser and illegally in possession of suit premises and the sale deed is illegal for want of plaintiff's consent. Accordingly, I answer issues no.1 and 2 ind the negative.

As to Issue No.3:

17] It is a matter of record that, plaintiff is public trust and only one of the trustees i.e. Chairman of the trust has filed present suit. All the trustees have not filed present suit. Learned advocate Shri. Pashankar for defendant argued that, all the trustees of the trust are joint owners of the suit property. Therefore, all the trustees ought to have filed the present suit. Instrument of trust deed is not produce on record to show that, provision of delegation of powers of all the trustees to one trustee in the said instrument. All the trustees have no power to pass resolution authorising one of the trustee i.e. the Chairman Shri. Sandbhor to file the present suit. Hence, according to him, suit filed by one trustee is not maintainable. Suit is bad for non joinder of necessary parties i.e. all the trustees. Hence, it is liable to be dismissed. Learned advocate Shri. Pashankar relied on following rulings :

1] Atmaram Ranchhodbhai Vs. Gulam Mohiyaddin and another, AIR 1973 Gujarat 113(V 60C 17(1).

2] **Duli Chand Vs. M/s. Mahabir Pershad Trilok Chand Chritable Trust, Delhi, AIR 1984 Delhi 145.**

3] **Nagar Wachan Mandir, Pandharpur Vs. Akbaralli Abdulhusen and sons and others, 1994 Mh.L.J.280.**

18] Learned advocate Shri.Javir for plaintiff argued that, if the suit is filed by one trustee who is authorised by other trustees, the said authorisation given to one of the trustees to file the suit for recovery of possession is a valid delegation within exception recognized by law. Learned advocate also relied on resolutions Exh. 35 and 36. Learned advocate relied on the ruling of Hon'ble Bombay High Court in case of **Shamabai Surajkaran Joshi and others, Vs. Madanmohan Mandir Sanstha, 2014(2) Bom.C.R.436.**

19] Before going into factual matrix, I would like to consider rulings relied by both the sides. Ruling in **Atmaram's** case is authority of Full Bench of Hon'ble Gujarat High Court. It is relied in the ruling of Hon'ble Bombay High Court in **Nagarwachan Mandir's** case (cited supra). After going through both these rulings it appears that, provisions of Section 47 and 48 of Indian Trust Act are considered. In **Atmaram's** case, ruling of Hon'ble Apex Court in **Abdul Kayum Vs. Ali Bhai, AIR 1963, S.C.309** is relied to hold that Section 48 of Indian Trust Act is equally applicable to a public religious or charitable trust.

20] However, in **Shamabai's** case (relied by plaintiff), Hon'ble Bombay High Court has taken a view relied on the Full Bench Ruling of Hon'ble Bombay High Court in Writ Pet. No. 3749 of 2008, wherein it is ruled that, provisions of Section 47 and 48 of The Trusts Act 1882 are not applicable to the Public Trust covered by the Bombay Public Trust Act, 1950. In **Shamabai's** case, the Hon'ble High Court has referred **Abdul Kayum's** case and **Nagarwachan Mandir's** case. In **Shamabai's** case, after considering all the rulings and ratio laid down by the Full Bench of Hon'ble

Bombay High Court in Writ Pet.No.3749 of 2008, the Hon'ble High Court has laid down that, authorisation given to one of the trustees is a valid delegation of duty to execute the trust as it fell within the exception recognized by law. In that ruling, the Hon'ble High Court has upheld the delegation by all the trustees to one of the trustee to file the suit for ejectment and possession, as the said delegation merely gives effect to decision given by the trustees jointly. It is also observed that, said delegation is within the exception of law as observed in the ruling of Full Bench of Hon'ble High Court in Writ Pet.No.3749 of 2008.

21] In view of above noted legal position laid down by our Parent High Court, ruling in **Atmaram's** case by Full Bench of Hon'ble Gujarat High Court is not helpful in the present case. So also, ruling in **Dulichand's** case (cited by defendant) has no binding effect as held in Shamabai's case by our Parent High Court. Therefore, in the light of above noted ruling in **Shamabai's** case, if the copies of resolutions at Exh.35 and 36 are considered, it appears that, resolution at Exh.35 discloses the intention of all the trustees to initiate legal action against the defendant and resolution Exh. 36 authorises Chairman Shri.Sandbhor by all the trustees for giving effect to resolution at Exh.35 which is jointly passed by all the trustees. In view of this, I am of the opinion that, authorization given to Shri. Sandbhor, Chairman of the plaintiff trust by all the trustees by resolution Exh. 36 is a valid delegation of power as it is covered under the exception of law as observed in above **Shamabai's** case. In view of this, I hold that, there is no bar of non joinder of necessary parties to the present suit. Suit is maintainable. Accordingly, I answer issue no.3 in the negative.

As to Issue No.4:

22] Learned advocate Shri. Pashankar for defendant argued that, plaintiff was accepting rent from defendant till 2008 and Radhabai died in the year 2009. There is no explanation that why rent was not accepted

after 2008. Trustees of plaintiff-trust were knowing that, business in the suit premises was transferred by Radhabai in favour of defendant in the year 1995. Therefore, suit ought to have been filed within three years from 1995. Hence, according to him, suit is not within limitation.

23] Learned advocate Shri. Javir for plaintiff argued that, plaintiffs came to know about sale deed dated 2.11.1995 when plaintiff obtained information under Right to Information Act from the office of Labour Commissioner in the year 2011. Suit is filed within three years from having knowledge of the sale deed. Hence, suit is within limitation.

24] It is not in dispute that, plaintiff has accepted rent from defendant and issued rent receipt in the name of Radhabai upto year 2008. However, plaintiff had not given any valid explanation that, why they did not accept rent after 2008 from defendant. P.W.1 Sandbhor is unable to state that, plaintiff-trust had not accepted rent even though defendant was ready to pay rent after 2008. P.W.1 Shri. Sandbhor further admitted in cross-examination that, license under Shop Act of business of flour mill was initially in the name of Radhabai Pardeshi. He further admits that, said license is in the name of Dnyaneshwar Bhujbal since 1995. This admission goes to show that, despite having knowledge of license of the business in the name of Dnyaneshwar since 1995, plaintiff-trust did not make inquiry to know that how license is transferred in the name of Dnyaneshwar Bhujbal. So also admittedly, Radhabai Pardeshi died in the year 2009, despite of that, plaintiff did not make inquiry since her death till 5.5.2011 as to how defendant is running flour mill in the suit premises. It probablises that, plaintiff was having knowledge about transfer of tenancy rights and business by Radhabai in favour of defendant in the year 1995. It appears that, only to bring the suit within limitation, plaintiff has taken plea of obtaining information under Right to Information Act in May 2011. Trustees of plaintiff-trust were knowing about transaction in

between Radhabai and defendant. Defendant was conducting business in the suit premises even after death of Radhabai. Despite of that, plaintiff had not taken steps to file present suit. Hence, the suit is not appears to be within limitation. I answer issue no.4 in the negative.

As to Issue 4A:

25] Learned advocate Shri. Pashankar for defendant argued that, defendant has successfully established that, defendant became tenant of the suit premises by way of transfer of tenancy rights in his favour by Radhabai vide sale deed dated 2.11.1995. As against this, plaintiff filed to prove that, defendant is trespasser. Hence, relationship in between plaintiff as landlord and defendant as tenant has been established in the trial of suit. Hence, this court has no jurisdiction to grant reliefs claimed in the suit. Therefore, this court has no jurisdiction to try this suit.

26] Learned advocate Shri. Javir for plaintiff argued that, plaintiff has not come with a case of existence of relationship as landlord and tenant in between plaintiff and defendant. Plaintiff has come with a case that, defendant is trespasser in the suit premises. Jurisdiction to try and entertain the suit is depend only upon the averments in the plaint as not as per defence of the defendant. Hence, according to him, civil court has jurisdiction to try and entertain this suit. Learned advocate Shri. Javir relied on following rulings :

- 1] **Kusumkant T. Nagda Vs. Mariam Bi wd/o Ebrahim, 2005(2), Mh.L.J.67.**
- 2] **Abdulla Bin Ali Vs. Galappa, 1985 DGLS(Soft)35.**
- 3] **Vishwanath Sawant Vs. Gandabhai Kikabhai, 1990(2) Bom.C.R.406.**

27] I have considered all the above noted rulings relied by plaintiff. There cannot be dispute about proposition or ratio laid down in

the above noted rulings. It is well settled position of law that, initially jurisdiction to try and entertain the suit depends only upon averment in the plaint and defence of defendant is not required to be taken into consideration. Therefore, initially in view of averments in the plaint, only this court i.e. Civil Court has jurisdiction to try and entertain this suit. In **Dattatrya Krishna Jangam Vs. Jairam Ganesh , 1966 Bom.C.R.645**, the Hon'ble Full Bench of High Court has held that,

“ The position therefore is that, in order to determine which court has jurisdiction to try the suit, the court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. Whatever may be the form of relief claimed, if on a fair reading of plaint, it becomes apparent that, the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and the relief claimed in substances to relate the recovery of rent or possession or raises a claim or question arising out of the Rent Act or any of it's provisions, then it is the special court alone that, will have jurisdiction to decide the suit. If a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant, the continuance of suit in the special court will depend on the decision of the court on that issue. Similarly, if the plaint does not alleged the relationship of landlord and tenant, no question arises out of the Act or any of its provisions, then it will be the ordinarily Civil Court and not Special Court that will have jurisdiction to entertain the suit”.

28] In view of above noted position, it becomes clear that, because of averments in the plaint asserting that, defendant is trespassers and as there is no averment regarding existence of relationship as landlord land tenant in plaint, only the Civil Court is having jurisdiction to try and entertain present suit. However, after recording evidence and hearing the submissions, the position emerges that, plaintiff failed to prove that, defendant is trespasser in the suit premises. As against this defendant succeeds to establish that, he is tenant in the suit premises. Deceased Radhabai has validly transferred running business concern alongwith goodwill, stock-in-trade and incidental tenancy rights in the suit premises

in favour of defendant U/sec.15(1) of Bombay Rent Act vide sale deed dated 2.11.1995. Thereby, defendant had acquired tenancy rights in the suit premises as per definition of tenant provided in Section 5(11)(aa) of Bombay Rent Act. Thus, relationship of landlord and tenant has been established by evidence in the trial in this suit. No reliefs prayed in the suit can be granted in favour of plaintiff as the Civil Court has no jurisdiction to grant such reliefs in view of establishment of relationship of landlord and tenant in between plaintiff and defendant. In view of this, I answer issue no.4 accordingly.

As to Issues No.5 & 6:

29] Plaintiff has claimed various reliefs based on the contention that, sale deed executed by tenant Radhabai in favour of defendant is without consent and it is illegal. However, as noted above, I have recorded finding that, sale deed executed by tenant Radhabai is legal in view of proviso of Section 15(1) of Bombay Rent Act. Defendant became tenant for the suit premises U/sec.5(11)(aa) of Bombay Rent Act. Defendant cannot be declared as trespasser in the suit premises. His possession is as a tenant in the suit premises. Therefore, plaintiff is not entitled for possession of suit premises and declaring that, sale deed is not binding on plaintiff. Consequently, plaintiff is not entitled for damages, mesne profits and permanent injunction. In short, plaintiff is not entitled for any relief. Accordingly, I answer issue no.5 in the negative. Suit deserves to be dismissed. In the result, I pass following order.

Order

- 1] Suit is dismissed with costs.
- 2] Decree be drawn up accordingly.

Sd/-

(N.G.Shukla)

Dated: 28.03.2016.

2nd Add. Judge, S. C. Court
& Jt. Civil Judge S. D.Pune.

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Mrs. S.K.Sayyed, Steno H.G.
Court Name : Shri. N.G.Shukla,
2nd Addl. Judge, Small Causes Court, Pune.
Date of Judgment : 28.03.2016
Judgment signed by presiding officer on : 02.04.2016.
Judgment uploaded on : 02.04.2016