

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.182 OF 2018

BASAPPA VEERPAKSHAPPA HOLKUNDE AND OTHERS

VERSUS

MURGAPPA CHANNAPPA HOLKUNDE DIED THROUGH LR NAGAPPA

MURGAPPA MURGAPPA HOLKUNDE

...

Mr. V.D. Salunke, Advocate for appellants

Miss M.D. Thube Mhase, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 22nd JULY, 2021

PRONOUNCED ON : 23rd AUGUST, 2021.

ORDER :

1 Present appeal has been filed by the original defendants challenging the concurrent findings. Present respondent's predecessor had filed Regular Civil Suit No.249/1977 before Civil Judge Junior Division, Nilanga, Dist. Latur, for recovery of possession of the premises, of which map was attached to the plaint, which was situated in village Kasar Shirshi. The said suit came to be decreed on 07.08.1982. The present defendants filed appeal, which appears to have been renumbered as Regular Civil Appeal

No.86/2012. The said appeal came to be dismissed by learned District Judge-1, Nilanga on 02.12.2017. Hence, they have approached this Court by filing present Second Appeal.

2 Heard learned Advocate Mr. V.D. Salunke for appellants and learned Advocate Miss. M.D. Thube Mhase for the sole respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 The only important point, that can be gathered from the submissions those have been made, is that the original plaintiff was contending that the suit property was firstly leased out to defendants' father in the year 1971, for which a Rent Note was executed and the duration was for six months. Thereafter, according to the plaintiff, the father of the defendants handed over the possession back to the plaintiff's father. But then it is again stated that the property was given on rent to the defendants' father in 1974. According to the plaintiff, Rent Note was executed even at this time also and the agreed rent was Rs.50/- per year. It appears that the plaintiff has not stated what was the duration of the lease when it was let out in 1974. The property is situated in the Grampanchayat area and it appears that the provisions of Maharashtra Rent Control Act are not applicable there. Under such circumstance, the provisions of Transfer of Property Act would be

applicable. Learned Advocate for the appellants submits that the plaintiff had not issued any notice as contemplated under Section 106 of Transfer of Property Act for termination of tenancy, and therefore, the suit in the present form was not maintainable. So also, it was contended by the plaintiff that the defendants had challenged the title of the plaintiff over the suit property, and therefore, that was in violation of Section 111-G of the Transfer of Property Act. Learned Advocate for the respondent strongly submitted that when the lessee or tenant is estopped from challenging the title of the landlord; yet, defendants themselves have come with a specific case that the property does not belong to the plaintiff and they are the owners of the suit property. Under such circumstances, both the Courts below have correctly held that the defendants are estopped from challenging the title of the plaintiff over the suit land, and therefore, the plaintiff is entitled to get the possession.

4 It also appears that plaintiff himself had not entered the witness box but his son, who was at the time of deposition 36 years of age, deposed on his behalf. In cross-examination he had stated that his father is still alive, but he claimed that he is unable to attend the Court. It is alleged that no specific reason was given for keeping the plaintiff away from the witness box and therefore, in view of the decision in **Janki Vasudeo Bhojwani vs. Indus**

Ind Bank, (2005) 1 Maharashtra Law Journal, 1170, testimony of PW 1 cannot be considered at all.

5 It also appears that the learned Trial Judge had considered as to whether the suit is bad for non issuance of notice of termination. According to the learned Trial Judge, the defendants' father and defendants would become tenants-in-sufferance, and therefore, in view of clarification 30 of Section 106 of the Transfer of Property Act, when the tenant denies the rights of the landlord and comes with a new case of holdings of a place, then the notice is not necessary, as he is tenant-in-sufferance. Under such circumstance, though even the learned First Appellate Court has also considered the said legal position in respect of Section 106 of the Transfer of Property Act; yet, the interpretation has to be done, and therefore, substantial questions of law are arising in this case, requiring admission of the Second Appeal. Hence, the Second Appeal stands **admitted**. Following are the substantial questions of law.

1 Whether notice of terminating the tenancy and asking the tenant to hand over the property leased out was necessary in this case, by virtue of provisions of Section 106 of the Transfer of Property Act ?

2 What is the effect of denial of title of plaintiff over the suit premises by the defendants ?

3 Whether the evidence led by the plaintiff through his General Power of Attorney cannot be considered, in view of the decision in **Janki Vasudeo Bhojwani vs. Indus Ind Bank, (2005) 1 Maharashtra Law Journal, 1170**, and subsequent decisions thereto ?

4 Whether interference is required ?

6 Issue notice to the respondent. Learned Advocate Miss. M.D. Thube Mhase waives notice for the respondent.

7 Call Record and Proceedings.

(Smt. Vibha Kankanwadi, J.)

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