

(2026) 03 BOM CK 0382

In the Bombay High Court, Nagpur Bench

Case No : Second Appeal No.88 Of 2024

Jaybunbi Sheikh Jafar

APPELLANT

Vs

Shantabai Gangadhar Kaml

RESPONDENT

Date of Decision : 18-03-2026

Acts Referred:

Transfer of Property Act, 1882 — Section 8(9), 106

Citation : (2026) 03 BOM CK 0382

Hon'ble Judges : Rohit W. Joshi, J

Bench : Single Bench

Advocate : Renuka Sirpurkar, S.A. Deole

Final Decision : Dismissed

Judgement

Rohit W. Joshi, J

1. The present Second Appeal is preferred against judgment and decree dated 27/06/2023, passed by the learned District Judge –17, Nagpur in Regular Civil Appeal No.430/2016 and judgment and decree dated 02/05/2016, passed by the learned Civil Judge, Junior Division, Ramtek in Regular Civil Suit No.26/2004.

2. The appellants in the present appeal are legal representatives of the original defendant. The respondent is legal representative of original plaintiff. The suit was filed, seeking decree of eviction, permanent and mandatory injunction with possession and damages. The case of the plaintiff is that she is owner of the suit property, which comprises of land bearing Survey No.88 admeasuring

0.74 acres, situated at Ramtek, Tahsil Ramtek, District Nagpur. It is the case of the plaintiff that out of the said land, a portion of land admeasuring 3500 sq. ft. (35 ft. East-West and 100 ft. North-South) was granted on lease to the defendant around 25 years before the institution of suit. The case of the plaintiff is that the tenancy was a monthly tenancy commencing from first day of each English calendar month and expiring on the last date thereof. The rent is stated to be Rs.100/- p.m. The lease pertains to open plot. The plaintiff claimed that the

defendant was irregular in making payment of rent since 01/03/2001 and that the Sawmill, for which the suit property was leased, was closed and instead, the defendant had started a hardware of shop and flour mill in the suit property since around four years prior to institution of the suit. The plaintiff also claimed that she was in need of the suit property for personal use.

3. The defendant filed written statement opposing the suit. Although in response to the paragraphs in the plaint, the defendant denied each and every averment made therein, in the specific pleadings, the defendant admitted that he was admitted as a tenant in the suit property in the year 1969. It is stated that the lease was with respect to open land. The defendant has contended that he has made construction over the suit property from his own funds. The defendant further stated that the lease was for manufacturing purposes and that it could be terminated only by issuance of six months notice. The defendant contended that the suit was liable to be dismissed, since notice, terminating tenancy was received by him on 10/03/2004 and the suit was instituted on 01/04/2004. The defendant also contended that the lease was not restricted to area of 3500 sq. ft. and that the entire field to the Southern side of the Ramtek-Tumsar road was let to him on lease. The defendant also contended that the lease was for a period exceeding one year and since it was not registered, it was inadmissible in evidence.

4. The learned Trial Court has passed decree for eviction and possession in favour of the plaintiff. The learned Trial Court referred to judgment in the case of Mohammad Shahariyar Baig Vs. R.P. Bhal, reported in 1987 (2) Civil L.J. 419 and Bacchulal Shahu Vs. Geeta Timber Co. reported in AIR 1996 Orissa 3 to hold that a lease granted for Sawmill is not a lease for manufacturing purposes and therefore, the contention of the defendant that the notice for termination of lease ought to have been a six months notice was rejected. As regards the proof of the lease-deed, the learned Trial Court referred to express admissions with respect to the lease deed in earlier suit between the parties being Regular Civil Suit No.251/1986. The learned Trial Court held that the defendant had admitted the lease in the said suit and the documents of lease were exhibited as Exh.87 and 88 in the earlier suit. The certified copies of the lease-deeds from the record of earlier suit came to be marked as Exh.58 and 59. The learned Trial Court also recorded that Section 106 of the Transfer of Property Act, 1882 provided that a lease for manufacturing purpose would be deemed to be a lease for year to year only in absence of contract to the contrary and that in the present case, lease deed clearly provided for payment of monthly rent and was a monthly lease. On this ground also, it was held that the lease could be terminated by issuing 15 days notice. The learned Trial Court found that the defendant had admitted receipt of notice on 10/03/2004 and the suit was instituted on 01/04/2004 after period of 15 days had lapsed since the date of service of notice. In view of the aforesaid, the learned Trial Court passed decree for eviction.

5. Being aggrieved by the aforesaid decree for eviction, the defendant preferred

appeal being Regular civil Appeal No.430/2016. The learned first Appellate Court has dismissed the said appeal. The learned first Appellate Court has recorded finding that the lease was not granted for manufacturing purpose and that the same was validly terminated vide notice dated 09/03/2002. The learned first Appellate Court has dealt with the evidence and has concurred with the findings recorded by the learned Trial court on reappraisal of evidence.

6. It will be pertinent to mention that while the appeal was pending, the defendant filed an application for amendment of written statement and memorandum of appeal vide Exh.52. The contention of the defendant in the said application is that the possession of defendant was not on land bearing Survey No.88, owned by the plaintiff but on land bearing Survey No.86, which was owned by adjoining owner Mr. Deshmukh. It is contended that in between land of Mr. Deshmukh bearing Survey No.86 and land of the plaintiff bearing Survey No.88, there is a Government land, which is a canal (Nala) bearing Survey No.87. The contention of defendant in the amendment application is that since the inception of tenancy i.e. in year 1969, the defendant was not in possession of land owned by the plaintiff but in possession of Survey Nos.86 and 87. The said application filed at Exh.52 was rejected by the first Appellate Court vide order dated 12/10/2022. The defendant also filed an application for appointment of Court Commissioner vide Exh.55. The defendant contended that joint measurement of the land bearing Survey No.86 owned by Mr. Deshmukh, Government land bearing Survey No.87 and Survey No.88, owned by the plaintiff was necessary to determine whether the defendant was in occupation of land, owned by the plaintiff or land owned by Mr. Deshmukh or Government land. The said application for appointment of Commissioner was rejected vide order dated 24/01/2023. The defendant had also filed an application for review of the aforesaid orders, passed below Exh.52 and 55 vide Exh.61. The learned first Appellate Court had passed an order, stating that the application for review would be decided at the stage of final hearing. The application for review is dealt with by learned first Appellate Court in the judgment. It is observed that the plaintiff had come up with a case that the defendant was her tenant with respect to land bearing Survey No.88 and that the defendant had admitted the said contention. In view of such observation, the learned first Appellate Court has rejected the application for review while delivering the judgment. The learned first Appellate Court has found that the plaintiff had come up with a case that she was owner of land bearing Survey No.88, which was let out to the defendant. It is held that the earlier orders were rightly passed having regard to the subject matter of the suit, which was a suit filed by the landlady for eviction against the lessee/tenant.

7. Dr. Renuka Sirpurkar, learned Advocate for the appellants has restricted her submissions to the identification of property and applicability of the Maharashtra Rent Control Act, 1999.

8. Her contention is that the measurement of land of Mr. Deshmukh bearing

Survey No.86 has revealed that the Sawmill of the defendant is located in Survey No.86. The contention of the learned Advocate is that since admittedly the plaintiff is owner of Survey No.88, the decree cannot be executed in order to recover possession of land bearing Survey No.86, which is owned by Mr. Deshmukh or Survey No.87, which is Government land, intervening between land of Deshmukh and plaintiff. The learned Advocate criticizes the findings recorded by learned first Appellate Court and contends that the most crucial aspect of the matter is not taken into consideration by the learned first Appellate Court, i.e., the plaintiff, who is not the owner of land bearing Survey Nos.86 and 87, cannot seek decree of eviction and possession against the defendant with respect to the said lands. Her contention is that measurement of the properties in question was necessary to determine as to whether the possession of defendant is over land bearing Survey Nos.86, 87 or Survey No.88.

9. Per contra, Mr. S.A. Deole, learned Advocate for the plaintiff contends that the defendant was inducted as tenant by the plaintiff's husband. The defendant has categorically admitted landlord-tenant relationship in the written statement. He draws attention to 7/12 extract with respect to suit property and contends that the said document shows existence of Sawmill of the defendant in the suit property. He draws attention to the fact that this document is filed on record by the defendant in the execution proceeding. He argues that in a dispute between landlord and tenant, the landlord is entitled to a decree for eviction and possession, even if, ownership is not proved. He, therefore, contends that the judgment and decrees concurrently passed by both the learned Courts do not warrant any interference.

10. In order to deal with the controversy, it will be appropriate to refer to the written statement of the defendant. The defendant has made a categorical statement in paragraph 11 of the written statement that in the year 1969, the plaintiff had leased out the whole area, which is in his occupation towards the Southern side of Ramtek-Tumsar road. The defendant stated that the possession of land was not handed over by measurement but by fixing boundary marks. The defendant has, thus, categorically admitted that he was inducted in the land in his possession as a lessee by the plaintiff. Most importantly, he has stated that the land was placed in possession by reference to boundaries. It will be pertinent to state that the defendant, even in the application for amendment of written statement, filed before the learned first Appellate Court, does not contend that either Mr. Deshmukh or the Government had granted lease to him. It will be appropriate to refer to the statement in the application for amendment, wherein the defendant has stated that he is not in possession of land bearing Survey No.88, owned by plaintiff but in possession of land bearing Survey Nos.86 and 87, which are owned by Mr. Deshmukh and Government respectively. The defendant has stated that he is in possession of Survey No.87 since the year 1969. He then states that the plaintiff, posing herself as owner, executed lease in his favour with respect to the said land. Thus, the defendant, in a sense, states that possession of Survey No.87 was taken by him from the defendant. It will

also be pertinent to state that the defendant has not come up with a case that he was inducted as a tenant by Mr. Deshmukh or Government.

11. It will be pertinent to state that in a case of eviction and possession, filed by landlord against the tenant, the title of landlord over the leasehold property is not material. The relevant consideration is as to whether landlord-tenant relationship between the parties exists and grounds to seek eviction are established. Reference in this regard can be made to judgment of the Privy Council in the case of *Musammatt Bilas Kunwar Vs. Desraj Ranjit Singh*, reported in AIR 1915 PC 96, wherein it is held as under :-

"The other point in the case is one of estoppel. The property was let by the Plaintiff to the Defendant Ranjit Singh; he was let into possession by the Plaintiff's gardener Bhairon, on her behalf and by her direction, and he regularly paid rent to her and applied to her to do all the necessary repairs; he has never given up possession to her although he duly received notice to quit, and he has denied her title. Sec. 110 of the Indian Evidence Act is perfectly clear on the point, and rests on the principle well established by many English cases, that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

12. Similar view is taken in the case of *S.K. Sarma Vs. Mahesh Kumar Verma*, reported in (2002) 7 SCC 505. Relevant observations in paras 13 and 14 are reproduced herein below : -

"13. Further, the contention of the learned Senior Counsel for the respondent that the railway administration has to prove that the property in question was belonging to it before invoking Section 138 is totally misconceived because once it is admitted that the respondent was given possession of the premises in question by order dated 17-1-1967 as he was entitled to the same while working as CPRO of the Department, he could not be permitted to deny the title of the railway administration. Admittedly, the respondent was inducted because he was in railway service. Now, he is estopped from challenging the title of the appellant over the premises in question.

14. The second part of the aforesaid section clearly provides that no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny the title to such person to such possession of the property. He cannot deny the same during the pendency of such licence or sub-lease. Such estoppel continues to operate so long as the licensee or sub-tenant has not openly restored possession by surrender to such person. This rule of estoppel would cease to operate only after such licensee or sub-tenant has been evicted. This position does not require reference to many judgments. However, we would refer to the decision in *S. Thangappan v. P. Padmavathy* in which the appellant tenant who was running an automobile workshop since 1962 disputed the title of the respondent landlady on the ground that a certain

Devasthanam was the actual landlord. This Court held that Section 116 of the Evidence Act, 1872 puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy. The significant words under it are "at the beginning the tenancy". So a tenant once inducted as a tenant by a landlord, later cannot deny his landlord's title. However defective the title of such landlord may be, such tenant cannot deny his title."

13. It will also be profitable to refer to the judgment of the Hon'ble Supreme Court in the case of Kanaklata Das and others Vs. Naba Kumar Das and others, reported in (2018) 2 SCC 352. The relevant observations in the said judgment are reproduced herein below for ready reference : -

"11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question which arose in this appeal. These principles are mentioned infra:

11.1.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal)"

14. Thus, the legal position in this regard is no longer res integra and is well settled by catena of judgments of the Hon'ble Supreme Court. It is beyond pale of any doubt that in a suit filed by landlord against the tenant for eviction, even if, the landlord is unable to prove his ownership, decree for possession must follow, if the landlord-tenant relationship is established and grounds for eviction are made out.

15. In the light of the aforesaid, what is relevant is that whether landlord-tenant relationship exists between the parties. If existence of landlord-tenant relationship is proved, then the question of title would be completely immaterial. In the written statement, the defendant has categorically admitted landlord-tenant relationship. In the earlier round of litigation also, the defendant admitted the landlord-tenant relationship. Most importantly, in the application for

amendment, although the defendant claims to be in possession of Survey No.86, owned by Mr. Deshmukh and Survey No.87, which is Government land, he does not state that he was inducted in the property by Mr. Deshmukh or the Government. Even in the application for amendment, the defendant has categorically stated that the possession of said land was received by him from the plaintiff in the year 1969, when the tenancy was created. What is material is that the defendant has come up with a specific case that the land in his possession was demarcated by boundaries and not by measurement when possession thereof was given to him as a lessee by the plaintiff, acting as lessor. This implies that the possession of entire land is received by him as a lessee from the lessor i.e. the plaintiff. It is also important to state that it is not the case of defendant that he, on his own, has committed encroachment over Government land bearing Survey No.87 or land of Mr. Deshmukh bearing Survey No.86 and is in possession of any land, in addition to the land, which was received by him from the plaintiff as lessee of the plaintiff. Thus, assuming that the defendant is in possession of Survey Nos.86 and 87, and that the plaintiff is not owner of the said survey numbers, yet decree for eviction needs to be maintained. In the case at hand, the defendant has not disputed landlord-tenant relationship at all even in the application for amendment before the first Appellate Court. The lease is validly terminated by a clear 15 days notice. Therefore, a decree for eviction and possession passed by the learned Trial Court, which is confirmed by the learned first Appellate Court does not warrant any interference on this ground.

16. At the outset, it must be stated that the provisions of the Maharashtra Tent Control Act, 1999 although they are applicable to areas located within Municipal limits of Ramtek Municipal Council, the defendant cannot claim protection of Rent Act, since the lease is with respect to an open land. The construction on the open land is made by the defendant/lessee. In this regard, reference needs to be made to definition of the term "premises", as defined under Section 7 (9) of the Rent Act, which reads as under:-

"7 (1).....

(2)

(3)

(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including.-

(i) the gardens, grounds, garages and out-houses, if any. appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house."

The definition clearly contemplates that "premises" means any building or part of the building let or given on licence. Therefore, in order to attract the provisions

of Rent Act, lease must be with respect to a building. It must also be stated that there is also a reference to gardens, grounds, garages and out-houses in Section 8 (9) (i). However, the said words are used in conjunction with words "appurtenant to such building". The words "such building" will mean building, which is let or given on licence. Thus, any open land will fall within the definition of the term "premises", if and only if it is appurtenant to any building let or given on licence. It is nobody's case that building was given on lease. The building is constructed by the tenant himself on open land, which was given on lease. The lease, therefore, is not with respect to premises, as defined under the Rent Act. Consequently, protection of the Rent Act cannot be claimed by the defendant/appellant.

17. No unsubstantial question of law arises for consideration in the Second Appeal. Second Appeal is, therefore, dismissed with no order as to costs.