



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2532/2024

(1) Prakash S/o Laxmandas
Damwani,

Aged 47 years, Occ. Business,
Proprietor of Gazal Bar,
Khamla, Nagpur since dead
through legal heirs already on
record.

1(a) Sharda Prakash Damwani,
Aged 50 years, Occ. Housewife,

1(b) Pankaj S/o Prakash Damwani,
Aged 29 years, Occ. Business,

1(c) Hitesh S/o Prakash Damwani,
Aged 27 years, Occ. Business,

All 1(a) to 1(c) R/o. Flat No.
201, Devika Towers, Opp.
Power Grid, Nari Road, Nagpur

1(d) Bharti Sunnay Tejawani,
Aged 30 years, Occ. Housewife,
R/o. B.K. No. 1491/12, Section
30-B, Opp. Gurunanak Darbar,
Ulhas Nagar 421004 Thane

.....PETITIONER(S)

// VERSUS //

Kishore S/o Chuharmal
Jaikalyani,
Aged 48 years, Occ. Business,
R/o. Balaji Towers, Khamla,
Tahsil & District Nagpur

.....RESPONDENT(S)

.....
Mr. J.J. Chandurkar, Advocate for the petitioner(s)
Mr. H. Dangre, Advocate for the Respondent
.....

CORAM : ROHIT W. JOSHI, J.

CLOSED FOR JUDGMENT ON :- JULY 07, 2026

JUDGMENT PRONOUNCED ON :- AUGUST 04, 2026

JUDGMENT:-

(1) The present petition is filed in order to challenge judgment and decree dated 15/03/2024 passed by learned District Judge-10, Nagpur in Regular Civil Appeal No. 23 of 2020 whereby learned Appellate Court has reversed judgment and decree dated 13/12/2019 passed by learned Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 583/2003. The petitioner is the original defendant. Respondent is the original plaintiff. The parties will hereinafter be referred to as plaintiff and defendant.

(2) The plaintiff had filed a suit for eviction, possession, damages and mesne profits against the defendant under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the MRC Act” for the sake of brevity) with respect to suit property which comprises of two shop blocks ad- measuring 360 square feet in all located on upper ground floor of a building known as Balaji Towers, House No. 3854/87 situated at Khamla, Nagpur. The plaintiff claims ownership over the suit property on the basis of a relinquishment deed executed in his favour by his brother Chandrakumar on 20/03/2002. The plaintiff claims that the suit property was let to the defendant on rent at the rate of Rs. 8000/- per month vide agreement dated 30/05/2002.

(3) It is the case of plaintiff that there was a partition between the plaintiff, his three brothers and their father with respect to certain properties including the building in which the suit property is located which is recorded in a memorandum of partition dated 01/11/2000 and the suit property had fallen to the share of Chandrakumar - brother of the plaintiff in terms of the said partition. The plaintiff claims that Chandrakumar had relinquished the suit property comprising of two shops in his

favour on 20/03/2002. The plaintiff has claimed that the defendant is in arrears of rent since 01/08/2002 and that he has made permanent construction in the suit property without his permission and has also sublet a part of the suit property to one O.G. Bajaj and Rajiv Agarwal. The plaintiff had issued a legal notice dated 03/12/2002 to the defendant. However, even after receipt of the notice, the defendant did not clear the arrears of rent and also did not vacate the suit property, as a consequence of which, the aforesaid suit for eviction came to be filed on 21/10/2003 which is registered as Regular Civil Suit No. 583/2003.

(4) The defendant entered appearance and denied averments in the plaint. The defendant contended that the plaintiff was not owner of the suit property at all. According to the defendant, the brothers of the plaintiff namely Dhanraj Jaikalyani and Khushaldas Jaikalyani are owners of the suit property and that he had taken the same on rent from them vide agreement dated 08/03/2000 for rent of Rs. 7000/- per month.

(5) In the light of respective pleadings, both sides led their evidence. The plaintiff examined himself and an Inspector

from State Excise Department. It will be pertinent to state that the defendant has obtained a bar license for running a bar at the suit property. The plaintiff's witness had produced on record copy of rent agreement dated 30/05/2002 under which the plaintiff claims to have let out the suit property to the defendant. The defendant, as stated above, reiterated his stand of denial of landlord-tenant relationship in the evidence and reiterated that the brothers of the plaintiff named above were owners of the suit property. The defendant also examined a witness from Nagpur Municipal Corporation who produced certain documents in support of his contention regarding the brothers of plaintiff being owners of the suit property. The defendant proved the agreement dated 08/03/2000 in his evidence which is marked as Exhibit 262. In the light of evidence that was recorded, parties advanced their arguments before learned Trial Court.

(6) Learned Trial Court has dismissed the suit holding that the plaintiff had failed to establish landlord-tenant relationship. Learned Trial Court has arrived at such conclusion on the grounds that the rent agreement dated 30/05/2002 was in

fact an undated document which is written on a stamp paper dated 30/05/2002. It is observed that there is no mention of upper ground floor in the Partition Deed (Exhibit 161), according to which, the suit property had initially fallen to the share of brother of the plaintiff from whom he claims to have received the suit shops by way of relinquishment. Learned Trial Court has also held that the rent agreement dated 08/03/2000 was proved at Exhibit 262 wherein names of plaintiff's brothers - Dhanraj and Khushal, appeared as landlords and that no steps were taken for cancellation of the prior rent agreement. Likewise, reliance is also placed on rent receipts issued in the name of Khushal which are up to the month of June, 2002. In view of such findings, the suit came to be dismissed.

(7) Being aggrieved by dismissal of the said civil suit, the plaintiff preferred appeal being Regular Civil Appeal No. 23/2020. Learned Appellate Court has allowed the appeal filed by the plaintiff. The judgment and decree passed by learned Trial Court came to be quashed and set aside and a decree for eviction came to be passed in favour of the plaintiff under section 15 of the MRC Act and also on the grounds of subletting.

Learned Appellate Court has found that the Inspector from Excise Department was examined by the plaintiff as PW-2 and he had produced the rent agreement dated 30/05/2002 on record. As per evidence of the said witness that said rent agreement was provided by the defendant for obtaining FL-III license. Learned Appellate Court has recorded that in the cross-examination of this witness, this statement made by him that the rent agreement dated 30/05/2002 was provided by the defendant was not challenged. Learned Appellate Court observed that despite being served with notice for payment of rent, the defendant did not make payment of rent which warranted a decree under section 15 of the MRC Act. It is also observed that the evidence with respect to subletting was also not challenged during the course of cross-examination, and as such, allegation with respect to subletting was also admitted.

(8) The tenant has filed the present petition challenging the said reversing decree by learned Appellate Court.

(9) Mr. J.J. Chandurkar, learned advocate for the defendant-tenant vehemently argues that the suit is completely

misconceived. He contends that the suit property which comprises of two shops totally ad-measuring 360 square feet is also subject matter of another suit for eviction filed by brother of the plaintiff namely Dhanraj which is registered as Regular Civil Suit No. 584/2003. He contends that two suits are filed for eviction with respect to the same property. He further contends that the claim of ownership is based on unregistered deed of partition, and as such, the same is not established. Learned advocate criticises the findings recorded by learned Appellate Court with respect to the tenancy agreement dated 30/03/2002. He contends that learned Trial Court had recorded cogent reasons for discarding the said document. Apart from this, he contends that the rent receipts placed on record clearly indicate that even after 30/05/2002, the brothers of the plaintiff namely Khushal and Dhanraj accepted rent for the suit property.

(10) Mr. J.J. Chandurkar, learned counsel has also criticised the findings with respect to appreciation of evidence of witness from the Excise Department. It is his contention that the said witness had clearly admitted in the cross-examination that he had not brought the entire record pertaining to the license

issued in favour of the defendant, and as such, his evidence was not believable.

(11) *Per contra*, Mr. H.D. Dangre, learned advocate for the respondent – plaintiff supports the findings recorded in the judgment by learned Appellate Court and the decree for eviction passed in the appeal. He contends that the other agreement on which reliance is placed by the defendant pertains to 1080 square feet area only. The contention is that there is a hall on the first floor which is let out to the defendant in addition to four shops on the upper ground floor. He contends that property let under the other agreement comprises of a hall admeasuring 720 square feet and 2 shops admeasuring 360 square feet and as such, the total area admeasuring 1080 square feet is let under the said agreement and further that the agreement forming subject matter of the present suit is with respect to other two shops admeasuring 360 square feet on the upper ground floor. He states that the total area in possession of the defendant is 1450 square feet. He contends that the submission that two suits are filed in order to recover possession of two shops on upper ground floor is incorrect. As regards ownership, he contends that the ownership

is duly proved by various documents executed between the family members. He further contends that in a suit between landlord and tenant, a landlord is entitled to a decree for eviction, even if ownership is not proved, provided landlord-tenant relationship is proved by him. He contends that appreciation of evidence by learned Trial Court is completely perverse, and as such, the findings recorded by learned Trial Court are rightly reversed by learned Appellate Court.

(12) I have heard the rival submissions of the parties as aforesaid. I have also perused the judgements delivered by both the learned Courts, the pleadings and depositions of the respective parties as also exhibited documents to which attention is drawn. Attention is particularly drawn to the agreements in question on which parties have placed heavy reliance.

(13) It will be appropriate to deal with the contention of Mr. Chandurkar that two separate suits have been filed in order to claim possession of the suit property which forms subject matter of the present petition. The contention is that these two shops which constitute the suit property are also subject matter

of Regular Civil Suit No. 584/2003 filed by the plaintiff's brother Dhanraj. I am afraid the said contention cannot be accepted. In this regard, it will be appropriate to refer to cross-examination of the defendant where he has categorically stated that the total area in his possession in the building is 1450 square feet. The agreement dated 08/03/2000 at Exhibit 262, which is the foundation of the defence of the defendant-tenant, is only with respect to one hall ad-measuring 720 square feet and two shops ad-measuring 360 square feet. Thus, the total area in possession of the defendant on the basis of agreement dated 08/03/2000 is 1080 square feet. The remaining 360 square feet area is the suit property. There are five shops on the upper ground floor. Two of the said shops are subject matter of Regular Civil Suit No. 584/2003 and other two shops are subject matter of Regular Civil Suit No. 583/2003, out of which, the present suit arises. The first contention that two suits are filed with respect to the same property is, therefore, liable to be rejected.

(14) The second contention of Mr. Chandurkar is that the plaintiff has failed to prove his ownership. The contention is that ownership is claimed on the basis of unregistered deed of

partition and unregistered deed of relinquishment. He states that the sale deed with respect to suit property is in the names of brothers of the plaintiff namely Khushal and Dhanraj.

(15) At the outset, it must be stated that in a suit for eviction filed by landlord against tenant, ownership is not a fact in issue. In order to succeed in the suit, the plaintiff must establish that he is landlord of the defendant. This legal principle is well settled. However, if an authority is needed for the proposition, reference can be made to the case of ***Kanaklata Das and Ors. vs Naba Kumar Das and Ors (2018) 2 SCC 352*** (paragraph no. 13).

(16) In the present case, the claim of plaintiff is based on rent agreement dated 30/05/2002. Although the defendant has denied the said agreement, a copy of the said agreement has come on record from the witness of Excise Department. The said witness has stated that copy of the rent agreement was filed by the defendant with the department for obtaining bar license to be operated from the suit property. Perusal of the cross-examination of this witness indicates that no suggestion is given

to him that copy of the agreement was not provided by the defendant for obtaining bar license. Learned Trial Court has erred in discarding the evidence of this witness merely on the ground that entire file pertaining to processing of license of the defendant was not produced on record. What was relevant is that a copy of the rent agreement dated 30/05/2002 was given by the defendant to the Excise Department for obtaining bar license. It will also be pertinent to state that the agreement dated 08/03/2000, on which heavy reliance is placed by the defendant, is only with respect to 1080 square feet. The remaining 360 square feet has come in possession of the defendant on the basis of the agreement dated 30/05/2002. Merely because the rent agreement dated 30/05/2002 does not bear a date will not render the agreement inadmissible or unreliable since copy of the same is utilized by the defendant for obtaining bar license. The defendant has acted upon the said agreement. The defendant is estopped from denying the same.

(17) It will also be pertinent to state that the plaintiff had filed a suit for perpetual injunction against unlawful dispossession against the brothers of the plaintiff namely

Khushal and Dhanraj. The said suit which came to be registered as Regular Civil Suit No. 333/2003 was decreed in favour of the plaintiff. Description of the suit property in the said suit is also restricted to 1080 square feet only. The said suit does not include the present suit shops which are ad-measuring 360 square feet. Reference to the earlier civil suit is found in the examination-in-chief of the defendant. This also clearly establishes that the suit property is different from the property forming subject matter of agreement dated 08/03/2000. Learned Trial Court erred in placing reliance on the judgment in Regular Civil Suit No. 333/2003 to hold that in the said suit, it was found that brothers of the plaintiff namely Dhanraj and Kushal were owners of the suit property. The said finding is recorded without realising that the suit property in the aforesaid suit for injunction filed by the defendant is different than the suit property which form subject matter of suit for eviction filed by the present plaintiff – Kishor.

(18) Learned Trial Court has observed that the words ‘upper ground floor’ do not appear in the partition deed. The observation by the learned Trial Court is not proper. The

building comprises of a lower ground floor, upper ground floor and first floor. The description of the suit property in Exhibit 262 which is the rent agreement dated 08/03/2002 is hall on first floor and shops on upper ground floor. There are two floors in the building referred as ground floor at times as lower ground floor and ground floor and at times as ground floor and upper ground floor.

(19) Thus, it is clear that the defendant is in possession of around 1450 square feet of area, out of which, under the previous agreement dated 08/03/2000 at Exhibit 262, only 1080 square feet of area was let to him. There is no evidence on record from the defendant to explain the circumstance in which he has come in possession of the additional 360–370 square feet of area. This additional area, which is admittedly in possession of the defendant, is the suit property.

(20) Most importantly, in the cross-examination of the plaintiff's witness no. 2, who is an Officer from the Excise Department, there is no suggestion that copy of the agreement dated 30/05/2002 under which the suit property is let out by the

plaintiff to the defendant was not provided by the defendant to Excise Department.

(21) The defendant has also placed very strong reliance on the rent receipts which are filed on record. These rent receipts are till the month of June, 2022. The rent shown to be paid therein is Rs. 7,350/- per month. The rent receipts show the names of brothers of plaintiff as landlords. In this regard, it must be stated that the rent receipts do not take the case of the defendant any further, since as per the agreement dated 08/03/2000 at Exhibit 262 on which reliance is placed by the defendant, the rent was Rs. 7000/- per month and the same was to increase @ 5% every year. Thus, the said rent receipts in which rent of Rs. 7350/- and Rs. 7000/- are shown to be paid are not pertaining to the suit property. Learned Trial Court has completely misinterpreted the said evidence, while dismissing the suit filed by the plaintiff.

(22) Mr. Chandurkar also draws attention to a floor plan pertaining to 1450 square feet of portion in the building, which comprises of four shop blocks on the upper ground floor and a

hall on first floor, which is signed by the brothers of the plaintiff. He contends that the document will prove that the defendant is tenant of brothers of the plaintiff. The said contention cannot be accepted. A map signed by the brothers of plaintiff, which includes the suit property as well, will not be sufficient to dislodge the rent agreement between plaintiff and defendant, execution of which is duly proved, particularly because the defendant has himself used rent agreement between himself and plaintiff for the purpose of obtaining bar licence. It is possible that the brothers of plaintiff signed the site plan since the entire property was purchased in their names. More importantly, the agreement dated 08.03.2000, which is the foundation of the defendant's contention with respect to he being tenant of plaintiff's brothers, pertains to 1080 square feet portion only, which does not include the suit property.

(23) In the light of the reasons recorded above, I am of the opinion that the learned First Appellate Court has properly appreciated the entire evidence on record and has arrived at correct findings of fact based on the evidence on record. Learned First Appellate Court has passed a well reasoned judgment in

reversing the judgment delivered by the learned Trial Court. Findings by the learned Trial Court are recorded without dealing with the entire evidence on record and most importantly, missing link with respect to additional 360 square feet area which is the suit property.

(24) Now let us deal with the grounds on which decree for eviction is passed. The decree is passed under Section 15 (arrears of rent), 16(1)(e) (subletting without written permission) and 16(1)(g) (bona fide need).

(25) As regards arrears of rent, it is not in dispute that the plaintiff had issued a notice dated 03.12.2002 calling upon the defendant to make payment of rent from August, 2002. Despite receipt of the notice, rent is not paid. The suit for eviction is filed after a period of 90 days from the date of service of notice on 21.10.2003. The rent is not paid even within a period of 90 days from the service of suit summons. Likewise, while the suit was pending, the defendant has not paid rent regularly to the plaintiff and has also not deposited the same in the Court. Thus,

the defendant is liable for eviction under section 15 of the MRC Act.

(26) The plaintiff has specifically stated that the bar in the suit property was being operated initially by one Mr. O. G. Bajaj, and thereafter, by one Raju Agrawal as sub-tenants and likewise an operation of the bar was sublet to Chourasia Pan Mandir. It is stated that the property is sublet without permission of the plaintiff. In the entire cross-examination, the defendant has not challenged the statement made in the examination-in-chief regarding subletting of premises as aforesaid.

(27) It is well settled that a statement made in examination-in-chief, when not challenged in the cross-examination, it must be assumed that the party conducting cross-examination accepts the correctness of the statement. Learned First Appellate Court has rightly considered this aspect of the matter and has granted a decree for eviction on the ground of sub-letting without written permission as contemplated under section 16(1)(e) of the MRC Act.

(28) The plaintiff has also stated that in his evidence that he intends to start his own business from the suit property and that he is doing business from tenanted premises during the course of his cross-examination by the defendant. A suggestion is given to him that the tenanted premises occupied by him have been purchased by him from his landlord. A specific suggestion that is given to a witness in the cross-examination is the positive case of the party conducting cross-examination. It is clear from the question put regarding a purchase of the tenanted premises occupied by the plaintiff as tenant that the defendant admits that the plaintiff is conducting his business from tenanted premises. The defendant has failed to prove that the plaintiff has purchased the tenanted premises occupied by him as suggested in the cross-examination. However, the fact that the plaintiff is conducting business from tenanted premises is admitted by implication by virtue of the said question. Thus, case of bona fide need is also established.

(29) As regards comparative hardship, the burden of proving the same is on the defendant. The defendant has not led any cogent evidence in this regard. Likewise, the defendant has

also not stated that after receiving notice for eviction or even after filing of the suit for eviction in which one of the grounds setup is bonafide need, he had started looking for alternate premises. In view of the aforesaid, the issue of comparative hardship is required to be answered in favour of the plaintiff. In view of the aforesaid, the decree for eviction deserves to be upheld on all three counts i.e. arrears of rent, subletting without permission and bonafide need.

(30) In view of the above, no case is made out for interference with well reasoned judgment delivered by learned First Appellate Court. Writ petition is, therefore, **dismissed**. Parties to bear their own costs. Pending application(s), if any, stand(s) **disposed of**.

(ROHIT W. JOSHI, J.)

(31) At this stage, Mr. Chandurkar, learned advocate for the petitioner/tenant makes a request to stay the execution of the decree for a reasonable period in order to enable the tenant to approach the Hon'ble Supreme Court.

(32) The petitioner/tenant has not entered the witness box in the present case and also denied landlord/tenant relationship. The agreement in question is acted upon by the defendant/tenant by utilizing the same for the purpose of obtaining bar license. In such circumstances, I am not inclined to defer execution of the decree. Prayer is **rejected**.

(ROHIT W. JOSHI, J.)