

(2011) 02 BOM CK 0120
In the Bombay High Court
Case No : S.A. No. 481 of 2010

Prakash Sadhuramji Bodhrani	Vs	APPELLANT
Uma Nilkanthrao Nayudu and Others		RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2011) 3 MhLj 754

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : M.R. Joharapurkar, for the Appellant; A.S. Chandurkar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Heard the learned Counsel for the parties.

2. The above second appeal challenges the judgment and decree dated 31-7-2010 in Regular Civil Appeal No. 185 of 2008 by which the decree of dismissal of the suit passed by the trial Court in Special Civil Suit No. 4 of 2000 dated 3rd May, 2008 came to be set aside and the suit came to be decreed, resultantly, Defendant No. 1 Prakash Sadhuramji Bodhrani and Defendant No. 3 Ajay Ramesh Bangre were directed to handover possession of the suit premises i.e. House No. 191/1, situated in Old Ward No. 26, Opposite Railway Station, Wardha.

3. The above Second Appeal raises following substantial questions of law:

1. Whether under the provisions of C.P. and Berar Letting of Premises and Rent Control Order, 1949 and particularly clause 13 thereof the suit filed by the Plaintiff against Defendant No. 1, who is admittedly a tenant, was maintainable ?

2. The trial Court, on the ground that the Plaintiffs having not obtained the permission contemplated under the said clause 13, could not have filed the suit for eviction of Defendant No. 1, who was admittedly a tenant, dismissed the suit

filed by the Plaintiffs for eviction of Defendant No. 1 and Defendants No. 2 and 3 ?

4. Being aggrieved by the dismissal of the said suit the Plaintiffs filed Regular Civil Appeal No. 185 of 2008 in District Court, Wardha. The learned District Judge allowed the appeal on the ground that the protection of Clause 13 could not be available to Defendant No. 3 Ajay Bangre, who was a trespasser. However, the appellate Court passed a decree of eviction against Defendant No. 1 who was admittedly a tenant as also the Defendant No. 3. Aggrieved by decreeing of the said suit by the first appellate Court Defendant No. 1 has preferred the instant first (second) appeal. In the light of the admitted position that Defendant No. 1 was tenant of the premises in question, the judgment of the first appellate Court, insofar as the eviction of Defendant No. 1 in view of the applicability of Clause 13, is not sustainable.

5. The appeal is, therefore, allowed insofar as the Appellant/original Defendant No. 1 is concerned and the decree qua him is resultantly set aside. The questions of law stands answered accordingly. However, it is made clear that it would be open for the Plaintiffs to proceed against him in accordance with law.

The Second Appeal is allowed.