

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.175 OF 2014
WITH
CIVIL APPLICATION NO.435 OF 2014**

Shri Santosh Narayan Dandkar

.. Appellant

Vs.

Shri Arvind Gopal Parkar

.. Respondent

Mr.D.A.Patil i/b Mr.Milind Parab and Associates for the appellant

Mr.Nilesh R. Yalmane i/b M/s.Manoj Harit and Co. for the respondent

**CORAM : K.K.TATED, J.
DATED : 02/09/2015**

PC:

1 Heard the learned counsel for the parties.

2 By the Second Appeal, the defendant challenges the concurrent finding of fact recorded by both the courts below.

3 In the present proceeding, there is no dispute that the plaintiff's father namely Gopal Laxman Parkar purchased the land bearing Survey No.668 Pot Hissa No.2B admeasuring 0.04.6 Hector fallow and land 0.00.5 Hector assessment 0.75 paise situated at Malvan by sale deed dated 26.3.1930. Thereafter, he constructed house which was numbered as Malvan Municipal House No.1122. Plaintiff's father

allowed the defendant's grand mother Sathabhama Pandurang Karangutkar to use and occupy the house. Thereafter, the plaintiff filed Regular Civil Suit No.63 of 2006 in the court of Joint Civil Judge, Junior Division Malvan for mandatory injunction for getting vacant possession of northern portion of Malvan Municipal House No.1122 and for recovery of land. That suit was decreed by the Trial Court on 29.8.2008 holding that plaintiff was owner of the suit premises and he allowed the defendant's grandmother to use the house property as gratuitous licence and directed the defendant to deliver the vacant possession of northern portion of suit house Malvan Municipal House No.1122 to the plaintiffs within four months from the date of decree.

4 Being aggrieved by the said decree passed by Trial Court, the defendant preferred Regular Civil Appeal No.139 of 2008. In that appeal, the appellate court framed following points for determination:

<u>Points</u>	<u>Findings</u>
1. Does the plaintiff prove that defendant is in possession of northern portion of Municipal House No.1122 as licensee of plaintiff ?	Yes.
2. Does the defendant prove that he is owner and possessor of entire suit property including Municipal House No.1122 ?	No. Defendant is in possession of only northern portion of Municipal House No.1122.
3. Whether the shed constructed by defendant in the suit property is legal ?	No.
4. Whether plaintiff is entitled to possession of the suit property ?	Yes.
5. Whether plaintiff is entitled to prohibitory and mandatory injunction against the	Yes.

defendant ?

- | | |
|--|--------------------------------|
| 6. Whether defendant is entitled to relief of declaration and injunction ? | No. |
| 7. Whether decree passed by Trial Court is correct and proper ? | Yes. |
| 8. What order ? | Appeal is dismissed with cost. |

5 The appellate court held that the defendant failed to prov that he was the owner of the suit premises and directed the defendant to hand over possession of the same to the plaintiff. The appellate court by decree dated 26.11.2013 dismissed the Appeal preferred by defendant.

6 The learned counsel for the defendant submits that the judgment and decree passed by both the courts is against justice, equity and good conscious and same is liable to be set aside. He submits that both the courts failed to consider long standing possession of the defendant in the suit premises. He submits that for the last more than 60 years the defendant and their predecessor were using the suit premises. Hence, the judgment and decree dated passed by both the courts are required to be set aside.

7 On the other hand, the learned counsel for the plaintiff submits that both the courts below on the basis of documentary evidence i.e. sale deed dated 26.3.1930 held that plaintiff's predecessor was owner of the suit premises and they allowed the defendant's predecessor to occupy the part of the property as gratuitous licensee. He submits that there is concurrent finding of fact recorded by both the courts below. Hence, there is no question of entertaining the Second Appeal.

8 I have heard both the sides at length. Admittedly, in the present proceeding, the predecessor of the plaintiff purchased the suit property and constructed the house and allowed the defendant's predecessor to occupy some portion thereof. Therefore, defendant cannot claim ownership and or any other right in the said premises. These facts were considered by both the courts below on the basis of documents on record.

9 The Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second Appeal can interfere with the concurrent findings of facts only if substantial question of law arises in the appeal.

10 Considering the submissions made by the learned counsel for the appellant, judgment and decree passed by both the courts and the law declared by the Apex Court, I do not find any substantial question of law arises in this matter. Hence, Second Appeal stands rejected.

11 In view thereof, nothing survives in the Civil Application. Civil Application is rejected as infructuous.

(K.K.TATED, J.)