

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

**SECOND APPEAL NO.565 OF 2014
WITH
CIVIL APPLICATION NO.1386 OF 2014**

Shri. Dattatraya Govind Jadhav D/H Appellants
and others.

Vs.

Smt. Sushila Kisan Jadhav D/H & Ors. Respondents

Mr. Pradeep J. Thorat, Advocate for the Appellants.
Mr. Nandu Vishnu Pawar, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.
Date : 12th January, 2015.

P.C. :

1 The Second Appeal arises out of the concurrent findings by the courts below of facts as well as the law. The appellants are original defendants no.1 to 3 in a suit for possession filed by the respondents. Appellant no.1 and respondent no.1 are sisters-in-law i.e. wives of two brothers. The premises in dispute are two rooms, admeasuring 12 ft. x 32 ft. with an ota with porch in front of the two rooms and toilet. Undisputedly title to the suit property earlier vested in the husband of respondent no.1 and on his death, the respondents have become entitled to the property. The appellants have been residing in the two

rooms on the permission granted by the husband of respondent no.1. In other words, the appellants were gratuitous licensee of the husband of respondent no.1. Relying upon two documents, one executed by the husband of respondent no.1 and the other by respondent no.1 herself, the appellants claim that both had given up their right in respect of the suit premises in favour of the appellants. Both the documents consist of simple affidavits. No right in immovable property can be created by an affidavit. The decision of the courts below that the appellants do not have any title to the the suit property, therefore, cannot be faulted. Consequently, there is no substantial question of law arising for the consideration of the court. The appeal is therefore dismissed.

2 Mr. Thorat then seeks time to vacate the suit premises. On instructions from appellant no.1, who is present in the court, he states that the appellants will vacate the suit premises within a period of one year from today. The statement is accepted.

3 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)