

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 485 OF 2015

(Shri Shakil Mohmod Shaikh & ors Appellants

Versus

Shri Vinaykumar Vasantrao
Deshpande Respondent)

Mr. Anand S. Patil, Advocate for appellants
Mr. A.M.Kulkarni, Advocate, for respondent.

CORAM : R.K.Deshpande, J.
DATED : 6th JULY, 2015.

P.C.

The trial Court passed a decree for possession of the suit property in Regular Civil Suit No. 822 of 2008 on 22.02.2012. The lower appellate Court has dismissed the Regular Civil Appeal No. 145 of 2012 on 13.11.2014. Hence, this second appeal by the original defendants.

The contention of the learned counsel for the appellants is that, there is a dispute between the plaintiff and one Pratik Patwardhan regarding title over the suit property, pending before the Apex Court in Petition for Special Leave to Appeal No. 5151 of 2006 in which notices were issued on 31.03.2006.

I have seen the order of the Apex Court passed on 31.03.2006 stating that until further orders, there shall be status quo with regard to the suit property and not to create third party right by either parties. The learned counsel for the appellants, therefore, submits that unless and until the dispute is decided by the Apex Court, the Courts below could not have passed a decree for possession against the appellants/defendants.

The lower appellate Court has held that even if it is assumed that the plaintiff is not the owner of the suit property but one Pratik Patwardhan is the owner of the property, the appellants who claim to be the tenants have not brought on record any evidence to substantiate their claim as tenants either of the plaintiff or of the person namely Pratik Patwardhan. The defendants have failed to justify their stand that they are the lawful tenants in respect of the suit property. No substantial question of law arises, the second appeal is dismissed.

At this stage, the learned counsel for the appellants submits that six months time be granted to vacate the suit property.

The learned counsel for the respondent-

plaintiff submits that the premises are already vacant and no one is residing there.

In view of this, the appellants are granted one month's time to vacate the suit premises. It is on the basis of the undertaking that the respondent-plaintiff shall not execute the decree for a period of thirty days from today. After expiry of period of thirty days, the decree shall become executable.

(R.K.DESHPANDE, J.)

Rvjalit