

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

SECOND APPEAL NO. 399 OF 2012

(Late Vijay Madhukar Kenkare and ors Appellants

Versus

Shri Julekha Mayudin Sayeed & ors Respondents)

Mr. Amar Bhatt, Advocate i/b Mr. S.H.Rajak,
Advocate for appellants.

CORAM : R.K.Deshpande, J.
DATED : 3rd AUGUST, 2015.

P.C.

The trial Court passed a decree in Civil Suit No. 198 of 1998 directing the defendant nos. 1 & 2 to hand over the possession of one room and a decree is also passed for recovery of arrears of rent of Rs.4,120/-. In Civil Appeal No. 105 of 2007, the lower appellate Court has modified the decree passed by the trial Court. The decree passed for eviction and possession has been maintained on 31.01.2012, whereas the decree for arrears of rent has been set aside. The original defendant no.1 is, therefore, before this Court in this second appeal.

Both the courts are concurrent in holding that the defendant no.1, who is the original tenant, has created sub tenancy in favour of the defendant no.2 and that the defendant no.1 has obtained an

alternate accommodation where he is carrying out his business.

The learned counsel for the appellants submits that the courts below were wrong in holding that there was a sub tenancy created.

The courts below have considered the statement of the defendant no. 2 recorded by the Sub Executive Officer on 16.02.1999 at Exh. 68, in which he had stated that he is doing the work under the name and style of Dilawar Caterers from last 2-3 years in front of open space of Mohiddin Manzil. He has further stated that initially he was residing in the room No. 3 as tenant and after expiry of the agreement, he could not find other suitable place and therefore, he kept all his utensils in the room of the defendant no.1. The defendant no. 2 has not entered the witness box, nor has he filed any written statement. It is, thus proved that the defendant no.2 is occupying the suit premises. The finding of fact recorded by the courts below does not give rise to any substantial question of law. The second appeal is dismissed.

Civil application do not survive and the same stands disposed of.

(R.K.DESHPANDE, J.)