

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

**SECOND APPEAL NO. 672 of 2012**

(Vinodkumar Omprakash Agrawal                      Appellant.

Versus

Shri Bholadasji Mandir and ors                      Respondents)

Ms. Leena Patil, Advocate, I/b Ms. M.S.Karnik,  
Advocate, for appellant.

Mr. M.M.Sathaye, Advocate, for Respondent No.1

**CORAM : R.K.Deshpande, J.**  
**DATED : 29<sup>th</sup> JUNE, 2015.**

**P.C.**

The trial Court dismissed Regular Civil Suit No. 370 of 2002 on 30.09.2008. The appellate Court has reversed the decision of the trial Court on 16.05.2012 in Civil Appeal No. 206 of 2008. The appellate Court has passed a decree directing the defendants to deliver the possession of the suit premises to the plaintiff.

The learned counsel for the appellant-defendant No. 2 raised the contention that the appellant, who is the defendant no.2, has purchased the suit property from defendant no.1 and hence, is in possession of the suit property as the owner. The sale deed is not produced on record. Apart from this, this was not the plea raised before the trial Court or before the appellate Court. No issue was framed

and hence, the question as to the title of the appellant-defendant no. 2 being a question of fact cannot be first time raised in the second appeal.

The appellate Court has passed a decree for possession of the suit property against the defendants. The defendant no.1 claimed to be the tenant of the plaintiff in respect of the suit property. The appellant-defendant no. 2 claims that he was inducted as a sub-tenant by the defendant no.1 and thereafter has purchased the suit property. The tenancy of the defendant no.1 expired on 30.11.2001 and accordingly the suit for possession was filed by issuing notice under Section 106 of the Transfer of Property Act. The trial Court recorded the finding that the lease being in respect of the open land, the provisions of the Maharashtra Rent Control Act are not applicable. Once the appellate Court finds that the tenancy came to an end by efflux of time, the defendant no.1 was bound to deliver the possession of the suit property to the plaintiff. Consequently, the sub-tenant inducted had no independent right in respect of the suit property and the appellant court has passed a decree for possession. No substantial question of law arises, the second appeal is dismissed.

**(R.K.DESHPANDE, J.)**