

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

SECOND APPEAL (ST.) NO. 18005 OF 2015

Sanjay Jagannath Khare ... Appellant

V/s.

Smt. Kaushabai Trimbak Kasbe & Anr. ... Respondents

....
Mr. Amol D. Wagh, Advocate for the Appellant.
....

CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 3, 2015.

P.C.

Heard the learned counsel appearing for the appellant. The trial Court has passed a decree for eviction and possession in Regular Civil Suit No.31 of 2010 on 21st July, 2014. The Lower Appellate Court has dismissed the Civil Appeal No.137 of 2014 on 11th February, 2015. The original defendant is, therefore, before this Court against the concurrent finding of facts.

2 The Courts below are concurrent in holding that the plaintiffs have proved their ownership over the suit property and the defendant is the trespasser. The contention of the defendant

that he was residing as a tenant in the suit property has been rejected. The only ground raised by the learned counsel for the appellant is that a notice under Section 106 of the Transfer of Property Act was issued before filing of the suit and, therefore, it should be presumed that the plaintiff himself treated the defendant as tenant. Perusal of paragraph 2 of the plaint shows that the plaintiffs have come with a case that they were out of station and the defendant has forcibly entered into the suit property and started residing there. Except this, there is no other evidence on record to show that there existed a relationship of landlord and tenant between the plaintiffs and the defendant. It is a clear case of possession from encroacher. No substantial question of law arises. Second Appeal is dismissed.

JUDGE