

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

**SECOND APPEAL NO.532 OF 2014
WITH
CIVIL APPLICATION NO.1297 OF 2014**

Shri. Ravi Haribhau Salukhe @ Koli Appellant

Vs.

Shri. Anthony Devassay Sebastian Respondent

Mr. Ashutosh R. Gole, Advocate for the Appellant.

Mr. Krishna K. Holambe-Patil, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 16th February, 2015

P.C.

1 This Second Appeal by the original defendant is to challenge the concurrent findings of fact and law of the courts below.

2 The respondent filed Special Civil Suit No.369 of 2005 against the appellant for a declaration that the appellant has no right to the suit property and that he is a trespasser in respect thereof. The respondent also sought possession of the suit property from the appellant. The trial court, by its judgment and decree dtd.17th December, 2011 decreed the suit and directed the appellant to handover possession of the suit property within three months from the

date of the decree. The appellant preferred appeal to the District Court being Regular Civil Appeal No.54 of 2012. The District Court, by its order dtd. 28th August, 2014 dismissed the appeal with costs.

3 The respondent claims to be the owner of the suit property vide tripartite agreement between himself, the CIDCO and one Lata Vishnu Gaikwad, the original owner of the premises. The respondent was the constituted attorney of Lata. It was his case that out of friendly relations, he had permitted the appellant to occupy the suit property temporarily and when the appellant failed to vacate the suit premises, the respondent had filed the suit herein.

4 The defence of the appellant was that he had purchased the suit property from one Mr. Ravindra Bhalsingh, who had purchased it from Lata. The appellant had paid an amount of Rs.1,05,000/- to him. But the document in respect thereof was defective. The appellant and the respondent were also good friends. The appellant and his wife carry on business of selling fish at Chembur. The respondent was carrying catering business at Chembur. For his catering business, the respondent regularly purchased fish from the appellant. The appellant had borrowed money from the respondent and had handed over all the papers concerning the suit property to him. About 2-3 years thereafter, the appellant and his wife repaid the entire loan by providing fish to the respondent. They did not keep any record of the transactions. They simply went on providing fish to the respondent. When the

entire loan was repaid, the appellant requested for return of the file for the purpose of registration of the sale. The respondent refused to handover the file. The courts below have rejected this defence of the appellant and held that the respondent has established his right of ownership to the suit property.

5 Mr. Gole, the learned advocate for the appellant submits that the courts below erred in holding that the respondent has established his title to the suit property. He submits that the respondent did not produce the original power of attorney given by Mrs. Lata Vishnu Gaikwad. Further the copy of power of attorney produced was admissible in evidence, as the same was insufficiently stamped. The appellate court has in fact doubted the entire transaction as also the documents produced by the respondent. In that circumstances, there could not have been decree in favour of the respondent.

6 The appellate court at paragraph 21 of the impugned judgment and decree notes that the tripartite agreement, Exhibit 31 is neither disputed by CIDCO nor by Mrs. Lata Gaikwad, the other two parties to the agreement. Therefore, there could be no challenge to the transaction by the respondent. It is also contended that there is receipt given by the respondent to Mrs. Lata Gaikwad is seen as the amount paid by Mrs. Lata to CIDCO. The extent of consideration paid by the respondent to Lata cannot be questioned by the appellant. As

long as tripartite agreement is undisputed between the three parties to the documents, the appellant as the third party cannot dispute the same. As regards the appellant's own claim, there is no evidence to establish the same. It cannot be lost sight of the fact that the appellant has also indirectly claimed right through Lata. The document relied upon by the appellant was only of agreement of sale and till date, he has not even filed suit for specific performance against the respondent. In the circumstances, both the courts below have arrived at the correct finding that the appellant has failed to establish any right thereto. There is no substantial question of law arising for consideration of this court. Hence, the appeal is dismissed.

7 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.)