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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.754 OF 2014
WITH
CIVIL APPLICATION NO.3814 OF 2013

1. Hurmatbee Shaikh Budhan APPELLANTS
(Died Through LRs)

1A. Shaikh Mukthar Sk. Budhan,
Age – 58 years, Occ – Service

1B. Shaikh Nisar Sk. Budhan,
Age – 45 years, Occ – Service

1C. Shaikh Jahir Sk. Budhan,
Age – 35 years, Occ – Service

All R/o 242, Shani Peth, Jalgaon

VERSUS

1. Amiruddin Shaikh Kabir RESPONDENTS
Age – 40 years, Occ – Labour
2. Kamruddin Shaikh Kabir
Age – 38 years, Occ – Labour
3. Rahimuddin Shaikh Kabir
Age – 25 years, Occ – Labour
4. Ruksanabi Shaikh Kabir,
Age – 60 years, Occ – Labour
5. Firozbee Shaikh Kabir,
Age – 27 years, Occ – Labour
6. Anisabee Shaikh Shaukat
Age – 26 years, Occ – Labour

All R/o Shani Peth, Jalgaon
House No.242, Katyafile, Jalgaon
Taluka and District Jalgaon

Hurmatbee Shaikh Budhan (Died) Thru LRs

7. Nathibee Syeed Noor,
Age – 65 years, Occ – Household
R/o Tambapur, Jalgaon
8. Najmabee Sattarkhan,
Age – 62 years, Occ – Household
9. Mairajbee Sk. Ibrahim,
Age – 55 years, Occ – Household

Both R/o Imli Wada, Near Masjid,
Varangaon, Taluka – Bhusawal,
District – Jalgaon
10. Raynabee Sk. Budhan,
Age – 47 years, Occ – Household
R/o 242, Shani Peth, Jalgaon
11. Ruksanabae Ronal Ali,
Age – 38 years, Occ – Household
R/o Dandekar Nagar,
In front of Raja Tractor, Jalgaon

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Mr. Shailesh P. Brahme, Advocate for the appellants
Mr. Shaikh Mujtaba Gulam Mustafa, Adv. for respondents 1 to 8

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th DECEMBER, 2016

ORAL JUDGMENT :

1. Heard learned advocates for the appearing parties.
2. It appears, plaintiff – appellant instituted proceedings bearing Regular Civil Suit No.461 of 2001 for declaration,

possession and injunction in respect of house property bearing C. T. Survey No. 2464 house No. 242 admeasuring 20' X 18' situated at Jalgaon.

3. The appellant went to suit claiming that Shaikh Ghasi was original owner of the suit house, who had left behind only one son Raheman. The property, after death of Shaikh Ghasi, came to Raheman and his wife Karamatbee and the appellant – Hurmatbee is the only daughter of Karamatbee. It was further case of the appellant that defendants No.1 to 4 had requested her to permit them to reside in part of the suit property admeasuring about 10' X 30' and the plaintiff, out of sympathy had allowed them to reside temporarily. Since possession was not being returned, a notice came to be issued for vacating premises. However, as the defendants did not heed the notice, the suit ensued.

4. In defence, respondents – defendants referred to Regular Civil Suit No.66 of 1944 for recovery of mortgage money in respect of suit property by Kashinath Vani, Narayan Vani against Lukdu Tukaram Vani, Halimabee and Chandbee resulting in the mortgagor being directed to pay mortgage money. Chandbee happens to be wife of brother of Raheman, namely, Ibrahim and

through Chandbee defendants claim to be in possession.

5. Upon these pleadings, necessary issues were framed and on merits, the trial court has considered that the plaintiff has failed to prove ownership and possession over the suit property and has dismissed the suit.

6. The appellate court has considered that vital facts have been suppressed by the appellant - plaintiff. The assessment list of suit house consistently shows name of defendants in municipal record. Evidence of plaintiff's witnesses is inconsistent *inter se*. Further the appellant – plaintiff had failed to show that the defendants were inducted in the suit premises as licencees and the court has considered that the defendants appear to be in possession of the property by inheritance.

7. Having regard to that trial as well appellate courts have scanned pleadings, issues and evidence and have rendered their concurrent findings negating claim of the plaintiff, in the second appeal it does not surface that findings so recorded in any way are against the facts, circumstances and evidence on record or the same tend to be perverse.

8, As such, there does not appear to be any substantial

question for consideration in present second appeal. Second appeal, as such, stands dismissed.

9. In view of dismissal of second appeal, civil application No.3814 of 2013 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]

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