

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Second Appeal No. 74 of 2014

Raufkhan Amirkhan Pathan,
Age 46 years,
Occupation : Business,
R/o Kasali Mohalla, Near Masjid,
Amalner, Taluka Amalner,
District Jalgaon.

.. Appellant.

Versus

Rashidkhan Amirkhan Pathan,
Age 64 years,
Occupation : Business,
R/o Kasali Mohala, Near Masjid,
Amalner, Taluka Amalner,
District Jalgaon.

.. Respondent.

Shri. Pathan Z.Y. Advocate, for appellant.

Shri. Nikhil S. Tekale, Advocate, holding for Shri. Amol S.
Gandhi, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 21 JULY 2016

JUDGMENT:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.70/2007 which was pending in the court of the Civil Judge, Junior Division, Amalner, District Jalgaon and also against the judgment and decree of Regular Civil Appeal No.6/2010 which was

pending in the District Court Amalner. The suit filed by the respondent for possession is decreed in his favour. Both the sides are heard.

In short, the facts leading to the institution of the appeal can be stated as follows :-

2) The suit was filed in respect of 7 x 13 ft. portion of house property which is given CTS No.1358 and which is situated at Amalner. It is the case of the plaintiff that the defendant was allowed to live on that place about 7 years prior to the date of the suit as he was in need of premises and he had no alternate accommodation and as he is related to the plaintiff as brother. It is contended that the defendant was to hand over possession after finding rented accommodation. It is contended that the plaintiff is in need of premises for personal use and so he had requested the defendant to vacate the premises but the defendant refused to vacate the premises and cause of action took place for the suit. It is contended that notice was given on 18-6-2007 to ask the defendant to vacate the premises but the defendant has not paid any heed to the notice.

3) Defendant filed written statement and contested the matter. He contended that Amirkha Pathan was father of the plaintiff and the defendant and the suit property was purchased by father of the plaintiff in the name of the plaintiff. It is contended that Amirkha is succeeded by two sons and four daughters and all of them are entitled to get share in the suit property. It is contended that in view of this circumstance the suit in the present form is not tenable. It is contended that all the successors of Amirkha are necessary parties to the suit.

4) The defendant contended that the plaintiff was having one more property which was shop from commercial complex of Municipal Council Amalner and it was also the property taken by Amirkha and it was belonging to all the successors of Amirkha. It is contended that the plaintiff has disposed of that property and he has utilized the sale proceeds of Rs.7 to 8 lakh. It is contended that the plaintiff wants to grab the suit property and so he has taken false stand. It is contended that before the Panch committee of the community plaintiff had agreed to give share of the defendant but

now he has filed the suit. It is the case of the defendant that he is running bangle shop in the suit property and his livelihood is dependent on the income from the said shop.

5) Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The trial Court held that the plaintiff is the owner of the suit property and possession of the defendant over the suit property is permissive in nature. In view of these circumstances, decree was given on the basis of title and these findings are confirmed by the first appellate Court. This Court, other Hon'ble Judge, admitted the appeal on 11-2-2014 by formulating following substantial question of law :-

"Whether the finding recorded by the Courts below that the suit property belongs to respondent/plaintiff is perverse ?"

6) Evidence of the plaintiff is as per the aforesaid pleadings in the plaint. The plaintiff has relied on sale deed of the year 1950, Exhibit 20 executed in favour of the plaintiff. This document shows that age of the plaintiff

was 5 years and his mother acted as guardian for purchasing the suit property. The father was not even witness on the sale deed.

7) The evidence of the defendant is as per the pleadings in the written statement. He has admitted that another property bearing CTS No.974 was standing in his name. He has sold some portion of this property. The defendant has examined his sister Madinabee and she has admitted in the cross-examination that one house property (CTS No.974) was purchased in the name of the defendant and one house property (the suit property) was purchased in the name of the plaintiff by the parents of the parties and those properties were purchased for the parties respectively.

8) One Hassan Shaikh is examined by the defendant to show that the dispute was taken before the Panch committee of the community. This witness Hassan Shaikh has given evidence in support of the case of the defendant but there is no record of Panch committee of settlement of the dispute. Ordinarily Panch committee

maintains such record which includes register and form. In view of this, no weight was given by the Courts below to the evidence of this witness.

9) The parties are Muslim. In view of the position of Muslim Law, which is discussed by the Courts below, burden was heavy on the defendant to prove that the property was purchased for all the successors by his father. As in the evidence the sister has admitted that this property was purchased for the plaintiff, other things need not be considered. So, the above point is answered in negative and the appeal is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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