

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

**SECOND APPEAL NO. 624 OF 2016
WITH
CIVIL APPLCIATION NO. 12476 OF 2016**

1. Mohd. Moizul Hasan S/o Abdul Aziz,
Age: 32 years, Occu. Service,
2. Mohd. Shaker S/o Mohd. Hussain,
Age: 52 years, occu. Driver,
3. Khairunnisabegum W/o Mohd. Shaker,
Age: 50 years, Occu. Household,
4. Sk. Badrouddin S/o Sk. Chand,
Age: 86 years, Occu. Quazi,
5. Zubedabegum W/o Sk. Badruddin,
Age: 75 years, Occu. Household,
All R/o M.H. No. 5-18-216/P
C.S.T. No. 18787, Silk Mills Colony,
Aurangabad.

...APPELLANTS
(Original Defendants)

versus

Seema Quazi W/o Mohd. Ismail,
Age- 45 years, Occu. Household,
R/o Silk Mills Colony, Railway Station,
Aurangabad.

...RESPONDENT
(original Plaintiff)

.....

Mr. V.J. Dixit, Senior Advocate instructed by
Mr. Sushant V. Dixit, Advocate for appellants -applicants
Mr. A.D. Kasliwal, Advocate for respondent

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 3rd OCTOBER, 2016.

ORAL JUDGMENT :-

1. Heard the learned counsel for appearing parties finally with consent.

2. The appellants are original defendants No. 1 to 5 and respondent is the plaintiff in Special Civil Suit No. 56 of 2013. Parties hereto would be hereinafter referred to by their original status in the aforesaid suit, viz; respondent would be referred to as "plaintiff" and appellants No. 1 to 5 would be referred to as "defendants".

3. Plaintiff instituted suit for recovery of possession of the property bearing Municipal House No. 5-28-116/P, CTS No. 18787 consisting of under ground hall, hall, two rooms, kitchen, bathroom and latrine on ground floor and latrine, bath room on the first floor, situated at Silk Mills Colony, Railway Station, Aurangabad. The plaintiff claims to be owner of the suit property having purchased for valid consideration under registered sale deed dated 27-03-2000. The plaintiff earns rent from the suit property. Around June 2009, property had been lying vacant and defendant No. 1, who was newly married to daughter of defendants No. 4 and 5 had been in need of house, as such, was allowed to occupy suit house till alternate accommodation is secured by him. In addition to defendant No. 1 along his wife, later defendants No. 3 to 5 also joined in occupation of the suit property. In the course of time, defendant No. 1 secured job as Lecturer and as such it was expected by the plaintiff that he would secure other accommodation. Since defendants were not willing to vacate suit house, the plaintiff had issued notice which came to be responded to, claiming false facts. As such, aforesaid suit has been instituted for possession along with mesne profits and damages @ Rs. 5000/- per month.

4. Defendants No. 1 to 5 appeared and filed their written statement combating claims of the plaintiff. Defendants admitted ownership of plaintiff over suit property, however, contested the claim of plaintiff's partial possession over the same, claiming defendants to be in possession of entire suit house. It was denied that defendants were let in the suit house for temporary period. Defendants contended that defendant No. 4 had purchased plot of land under registered sale deed dated 27-09-1984 and subsequently constructed house over the same and had been residing therein along with plaintiff and her husband, who is son of defendants No. 4 and 5. Subsequently, a dispute arose between her husband and defendant No. 4 (i.e. son and father) over some ancestral land, around 2000, and plaintiff and her husband had forced defendants No. 4 and 5 out of the residence.

5. It is the contention of the defendants that suit house had been purchased by husband of the plaintiff in the name of plaintiff and it was lying vacant. Since defendants No. 4 and 5 were forced out of their residence, they had started occupying suit house. It is their contention that while plaintiff along with her husband are staying in the house constructed by defendant No. 4 and are yet further claiming recovery of possession of the suit property. Defendants further referred to that defendant No. 4 has instituted proceedings for possession of the property constructed by defendant No. 4 bearing regular civil suit no. 1994 of 2012.

6. Issues upon the pleadings of the parties came to be framed, as to whether plaintiff proves that defendants are in possession of the suit property and the same has been answered in the affirmative, so also the issue with regard to plaintiff's entitlement to recover possession of suit

property has been answered in the affirmative. It has been further held that plaintiff is entitled to recover damages to the extent of Rs. 13,500/- only.

7. Being aggrieved by judgment and decree dated 18-12-2014, appellants – original defendants preferred regular civil appeal No. 32 of 2015 before the District Judge, Aurangabad. Learned District Judge-3 Aurangabad under judgment and order dated 28-07-2016 dismissed the same.

8. Mr. Dixit, learned senior counsel appearing for appellants -original defendants contends that courts below have missed out on vital aspects involved in the matter about that the plaintiff is only ostensible owner and that she has no source of income. It is being submitted that though the suit house is in the name of plaintiff, it has been purchased by her husband in her name. He submits that even the purchase cannot be said to be made without aid from defendants. Plaintiff's husband has been at loggerheads with defendants No. 4 and 5 over ancestral agricultural land and as such, had driven respondents No. 4 and 5 out of property owned and possessed by them and forced the defendants to reside in the suit house. He contends that plaintiff and her husband have grabbed entire property of defendant No. 4 and even have driven defendants No. 4 and 5 out of their residence entailing institution of the proceedings for declaration and possession in respect of said property. Defendants No. 4 and 5 were also required to file maintenance proceedings before the Family Court and maintenance has been granted to them. If defendants No. 4 and 5 are required to vacate the suit premises the condition would be precarious and they would almost be on road. He, therefore, submits

that looking at the relations and circumstances in which litigation has been moved, it ought to receive proper treatment and appreciation. Learned senior counsel reiterates that trial as well as appellate courts have missed out on the vital aspects of the case and as such, urges to admit the second appeal.

9. To counter aforesaid submissions, Mr. Kasliwal, learned counsel appearing for original plaintiff – respondent herein contends that during the course of trial, proper issues had been framed by the trial court and findings about entitlement of the plaintiff to possession and recovery of possession of the suit premises have been given. He submits that plea that other suit for possession has been filed is fallacious one since same does not affect entitlement of the plaintiff to suit property. He submits that it cannot be disputed that the suit property is owned by plaintiff and that she is entitled to possession of the same. She has registered deed in her favour. Nothing has been placed on record in respect of the contention that property had ever been purchased either by the plaintiff's husband or for that matter any income generated as sought to be contended at this stage on behalf of the appellants. No cogent evidence is adduced in this respect. Under the circumstances, he submits that plaintiff, who is a lady should not be detained from claiming back possession of the suit property. Learned counsel, on instructions, submits that plaintiff and her husband are ready and willing to allow defendants No. 4 and 5 to reside with them and it is open to them to accept the offer.

10. Perusal of judgments of the trial as well as appellate courts would show and it has emerged clearly on record that the plaintiff is owner of the property under registered sale-deed and further that there is no evidence

whatsoever about purchase having been made by plaintiff's husband or for that matter for the reason as is now sought to be contended in the second appeal. In the circumstances, so far as entitlement of the plaintiff to possession of suit property is concerned, it cannot be said it is a right without any basis. Trial as well as appellate courts have confirmed the same. So far as contention on behalf of the appellants that present suit has been outcome of sour relations developed between father and son may hardly have any efficacy so far as present litigation is concerned. The plaintiff being owner as emerged from record and by virtue of her ownership, her claim to possession to large extent has been legitimate.

11. As such, second appeal does not give rise to any substantial question of law. However, looking at the position that defendants No. 1 to 3 are staying in the suit premises along with defendants No. 4 and 5, there is request on behalf of the appellants to give latitude of two years for vacating suit premises.

12. Mr. Kasliwal, learned counsel appearing for plaintiff-respondent-herein however, opposes the request and relents only for two or three months' period for the same. In the circumstances, I deem it expedient that situation can be balanced by granting one year from today to the defendants for vacating the suit premises.

13. As such, second appeal stands dismissed. Execution proceeding may go on, however, handing over possession shall not take place before expiry of period of one year from today. It is further being made clear that rest of the part of execution of decree may be proceeded with.

14. In view of disposal of second appeal, nothing further survives for consideration in pending civil application and the same stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK