

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

***SECOND APPEAL NO. 907 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 1979 OF 2015
AND
CIVIL APPLICATION NO. 1980 OF 2015***

Smt.Tarabai Gabaji Ubale ... Appellant/Applicant
v/s
David Saloman Talkar & ors. ... Respondents

Mr.Sameer Ranade for the appellant and applicant in both civil applications.

Mr.Ajit Karwande along with Nitin Ghaware for the respondents.

***Coram: N.M. Jamdar, J.
Dated: 21 July, 2016***

ORAL ORDER:

The Appellant challenges the concurrent judgments and orders passed by the Civil Judge, Junior Division, Daund, and the District Judge, Baramati, decreeing the suit filed by the Respondents/Plaintiffs and dismissing the appeal filed by the Appellant.

2 The suit was filed by the Respondents/Plaintiffs for recovery of possession and for arrears and damages. The suit was decreed on 30 June 2008, and thereafter the appeal was filed by the Appellant in the District Court, Baramati, which was dismissed on 17 March 2015.

3 Heard learned counsel for the parties.

4 It is the case of the Appellant that the Appellant was a tenant of the suit property but the Respondents/Plaintiffs were not the landlords. A stand was taken by the other Defendants that the Plaintiffs are not the landlords and neither the Defendants are the tenants and no notice was given to Defendant Nos.2 to 5 for termination of tenancy. Learned counsel for the Appellant has reiterated the contentions raised in both the Courts.

5 Defendant No.1 is the son of Defendant No.2 and 3, and brother of Defendant No.4. Defendant No.3 is the present Appellant and wife of Defendant No.2. Therefore, the Appellant and the Defendants are the family members. As regard the contentions of the Appellant that the Respondents/Plaintiffs are not the owners, both the Courts have taken note of the relevant record of the Grampanchayat, various receipts and such other document, to come to the conclusion that the Respondents/Plaintiffs are the owners of the property. Both the Courts have also taken note of the proceedings in Regular civil Suit No.263 of 2001 to arrive at this conclusion. Therefore, on assessment of evidence the finding is recorded that the Respondents/ Plaintiffs are the owners. Nothing is shown why this documentary evidence and the extracts from the Grampanchayat, are to be discredited. Once the position that the Respondents/Plaintiffs are the owners of the property is established, then even assuming that

the Appellant is the tenant of the suit premises, the denial of title itself will be held against the Appellant.

6 As regard Defendant No.1, notice is duly issued to Defendant No.1 terminating the tenancy. Defendant No.1 has also admitted that he along with his wife – the Appellant, and other Defendants which are residing in the suit premises. Both the Courts have considered the evidence on record to conclude that the tenancy was validly terminated and the decree for possession in favour of the Respondents/Plaintiffs is required to be passed.

7 Furthermore, the judgment and order was passed by the learned District Judge on 17 March 2015. The appeal was filed on 22 May 2015. It was never circulated for urgent orders. It has come up on board today for the first time. In the intervening period, the Respondents/Plaintiffs have executed the decree and obtained possession of the suit premises.

8 In the circumstances, no substantial question of law arises. No other question was raised.

9 The second appeal is dismissed. The civil application is disposed of.

(N. M. Jamdar, J.)