

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 162 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 333 OF 2015****IN****SECOND APPEAL NO. 162 OF 2015****ALONGWITH****SECOND APPEAL NO. 177 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 349 OF 2015****IN****SECOND APPEAL NO. 177 OF 2015****ALONGWITH****SECOND APPEAL NO. 217 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 446 OF 2015****IN****SECOND APPEAL NO. 217 OF 2015****Jaysing Vasant Rao Desai & Anr.****..... Appellants****VERSUS****Vinayak Samshed Desai****(deceased) through legal heirs & Ors.****..... Respondents****Mr.V.A.Walawalkar, a/w. Mr.Suresh Sabrad for the Appellants.****None for the Respondents.****CORAM : R.D. DHANUKA, J.****DATED : 29th JANUARY, 2016****P.C.**

By these three appeals, the appellants have impugned the order and decree dated 15th May, 2014 passed by the lower appellate court dismissing these three appeals filed by the appellants. The appellants were the original plaintiffs in one

of the suit filed before the learned trial judge inter alia praying for injunction against the defendants to the said suit without due process of law. The respondents herein are the original plaintiffs in the other two suits which were filed inter alia praying for possession of the suit property from the appellants herein. All the three suits were tried together by the learned trial judge.

2. By an order and judgment dated 10th October, 2008, the learned trial judge partly decreed the suit filed by the appellants herein and restrained the defendant nos. 1 and 2 from causing obstruction to the peaceful possession of the plaintiff no.1 over the part of the suit property. The learned trial judge dismissed the suit in respect of the another part of the suit property. However at the same time the learned trial judge allowed the two suits filed by the respondents herein and directed the appellants herein (original defendants to the said two suits) to deliver vacant and peaceful possession of the suit property to the plaintiff to the said suits within three months and further directed to pay the plaintiff Rs.2,000/- per month towards charges from the date of filing of the suit till the recovery of the possession.

3. Being aggrieved by the common order and judgment dated 10th October 2008, the appellants herein filed three separate appeals before the lower appellate court. By an order and judgment dated 15th May, 2014, the lower appellate court has dismissed the two appeals filed by the appellants thereby impugning the decree of possession passed by the learned trial judge against the appellants in the suits filed by the respondents. The lower appellate court dismissed the third appeal filed by the appellants as the same did not survive in view of the orders passed in the other two appeals. Being aggrieved by the common order and judgment, the appellants have filed these three second appeals under section 100 of the Code of

Civil Procedure, 1908.

4. Learned counsel appearing for the appellants invited my attention to the observations and findings rendered in the order passed by the two courts below and would submit that the findings rendered by the learned trial judge as well as by the lower appellate court are perverse. He submits that the learned trial judge as well as the lower appellate court could not have granted relief in favour of the respondents and could not have dismissed the suits filed by the appellants.

5. A perusal of the record indicates that in the plaint filed by the appellants, there was no prayer for a declaration that the suit property was HUF property in which the appellants had alleged to have certain rights. The appellants had only applied for injunction against the respondents without following due process of law.

6. The learned trial judge has considered the oral evidence led by both the parties as well as the documentary evidence and has come to the conclusion that the appellants atmost could be considered as a licensee in respect of the suit property which licence was already terminated and upon such termination, the appellants have no right, title or interest of any nature whatsoever to be continued in the possession of the suit property. The findings rendered by the learned trial judge are confirmed by the lower appellate court independently after considering the documentary as well as oral evidence.

7. In my view since there was no substantive prayer in the suit filed by the appellants for declaration of any alleged rights in the suit property and the licence granted to the appellants was terminated, the learned trial judge in my view was

right in passing a decree of possession against the appellants. I also do not find any infirmity in the order passed by the lower appellate court which has independently rendered findings of fact.

8. The findings recorded by courts are concurrent findings which in my view are not perverse and thus no interference with such concurrent finding of fact is warranted under section 100 of the Code of Civil Procedure, 1908.

9. All three second appeals are devoid of merits and are accordingly dismissed. In view of dismissal of these three second appeals, the pending civil applications therein do not survive and are accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]