

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 84 OF 2016
IN
SECOND APPEAL NO. 58 OF 2016

Bhavarlal Lachiram Trivedi

..... Applicant

VERSUS

Smt.Madhu Hemant Dave & Anr.

..... Respondents

Mr.B.S.Nayak for the Applicant.

Mr.M.L.Palan, i/b.Ms.Jayshree P.Thakkar and Ms.Faujiya Shaikh for Respondent nos. 1 and 2.

CORAM : R.D. DHANUKA, J.

DATE : 29th AUGUST, 2016

P.C.

Rule. Learned counsel appearing for the respondents waive service.

2. Civil application is heard forthwith. By a separate order passed by this court in Second Appeal No.58 of 2016, this court has already admitted the said second appeal on the substantial questions of law formulated in the said order.

3. It is not in dispute that the applicant is in possession of the suit property. Since this court is of the prima facie view that the learned trial judge could not have passed a decree under a leave and licence agreement which according to the original plaintiff itself had merged with the agreement for sale in respect of which no decree for specific performance came to be granted by the learned trial judge.

4. For the reasons recorded in the civil application, civil application is made absolute in terms of prayer clauses (a) and (b). The applicant shall not create any

third party rights in respect of the suit property during the pendency of the second appeal. No order as to costs.

5. It is made clear that the respondents (original plaintiffs) are at liberty to file appropriate proceedings for payment of arrears if any, before the learned trial judge.

6. Hearing of the appeal is expedited.

[R.D. DHANUKA, J.]