

Sequeira

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

SECOND APPEAL NO. 60 OF 2016.

Along with

Civil Application No. 1863 of 2015.

M/s.Nikhil Enterprises

... Appellant /
Applicant.

V/s.

Shri. Dinesh Rajnikant Trivedi.

... Respondent.

Mr.Y.J.Master i/b Mr.Prakash Mahadik, for the Appellant / Applicant.
Mr.G.S.Bhat, for the Respondent.

Coram : N.M. Jamdar, J.
Wednesday 27 April, 2016.

P.C. :-

The Appellant challenges the concurrent Judgment and Orders passed by the Civil Judge, Junior division Belapur, Thane and the District Judge, Thane decreeing the Suit filed by the Respondent and dismissing the Appeal filed by the Appellant.

2. The dispute pertains to an open piece of land bearing Gat no.282 at village Dighe, Belapur Road, Thane. The land was given by an unregistered lease to the Appellant by the father of the Respondent. Notice was issued by the Respondent to the Appellant on 28 May 2009 calling upon the Appellant to hand over the possession of the plot. It was

stated that the Appellant is in arrears of the rent and that provisions of Maharashtra Rent Control Act, 1999 are not applicable. Since the Appellant did not hand over the possession of the plot, Suit bearing No.77 of 2009 was filed by the Respondent. The Suit was decreed by the learned Civil Judge by Judgment and decree dated 31 August 2013. The Appeal No.212 of 2013 was dismissed by the learned District Judge, Thane on 31 August 2015.

3. The learned counsel for the Appellant has tendered an application with a prayer that it may be declared that the title deed of Respondent is bogus and defective and to order the Respondent to produce original registered Power of attorney in the Court. The Application is dated today. No explanation whatsoever is given as to why such application could not be taken out earlier except stating that the documents were received on 18 March 2016. In any case I am not inclined to permit the Appellant to produce the documents in question at this stage, in view of the specific observations of the learned District Judge that title of the Respondent has not been challenged by the Appellant. Even in the Written statement there is no specific assertion that the Respondent is not the owner of the property.

4. The learned counsel for the Appellant submitted that the Respondent has only produced 7/12 extracts, which will not confer any title upon him. This also cannot be accepted. The father of the Respondent was admittedly the owner. There is no dispute that the Respondent is his son. After the notice was received the Appellant has

sent a cheque to the Respondent and therefore, the learned District Judge has rightly observed that the Appellant has accepted the Respondent as an owner of the property. Even assuming there are other heirs, the Suit is not bad for non-joinder.

5. The suit property is an open piece of land and provisions of Maharashtra Rent Control Act,1999 are not applicable. There is no dispute regarding this position. The argument of the learned counsel for the Appellant that amount has been paid after notice was received will not cure the default of non payment of rent which amounts to breach of the condition of lease. The notice under Transfer of Property Act,1882 has been duly served. The request of the learned counsel for the Appellant to remand the proceedings since the appellate Court has observed that provisions of rent legislation are not applicable, cannot be accepted. By the admitted facts on record the Appellant has no right to the property and his tenancy has been validly terminated.

6. In the circumstances the Appeal involves no question of law and is dismissed. Civil application is accordingly disposed of. As far as the application tendered today, the same is rejected. The learned counsel for the Appellant states that he will get the Application numbered within period of two weeks from today.

(N.M. Jamdar, J.)