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

**SECOND APPEAL NO.137 OF 2012
WITH
CIVIL APPLICATION NO.13953 OF 2015
CIVIL APPLICATION NO.2109 OF 2012 AND
CIVIL APPLICATION NO.15576 OF 2016
IN
SECOND APPEAL NO.137 OF 2012**

1. Sayyad Ashrafali Ibrahim,
Age: 54 years, Occu: Business
2. Sayyad Jakir Ibrahim,
Age: 39 years, Occu: Business
3. Sayyad Parvez Ibrahim,
Age: 31 years, Occu: Business
4. Sayyad Jamir Ibrahim,
Age: 20 years, Occu: Business
5. Sayyad Najmunnisa Ibrahim,
Age: 70 years, Occu: Business
6. Bilkis Afzal Pathan,
Age: 36 years, Occu: Household
7. Sayyad Shahin Ibrahim,
Age: 37 years, Occu: Household
8. Sayyad Rijwana Ibrahim,
Age: 30 years, Occu: Household
9. Shaikh Parwin Sarajoddin,
Age: 37 years, Occu: Household

All R/o. Jamkhed, Tq. Jamkhed,
District Ahmednagar

Through their power of Attorney
Holder Sayyad Javed Ibrahim,
Age: 44 years, Occu: Business,
R/o. Jamkhed, Tq. Jamkhed,
District Ahmednagar

..APPELLANTS

VERSUS

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1. Shaikh Kayum Shabbir Subhedar,
Age: 47 years, Occu: Business
2. Shaikh Sadik Shabbir Subhedar,
Age: 42 years, Occu: Business
3. Shaikh Nayum Shabbir Subhedar,
Age: 39 years, Occu: Business

All R/o. In front of Old S.T. Depot.
P.O. Jamkhed, Tq. Jamkhed,
District Ahmednagar

..RESPONDENTS

Mr V.D. Hon, Senior Advocate, instructed by Mr Ajinkya Deshmukh,
Advocate for appellants;
Mr S.S. Wagh, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 6th June, 2017

ORAL ORDER

Regular Civil Suit No.261 of 2000 was filed in the Court of Civil Judge Junior Division, Jamkhed by the present appellants for recovery of rent and possession of the suit land, based on the title. The subject-matter of the suit is the land within the jurisdiction of Grampanchayat, Jamkhed located opposite old S.T. Depot and stand on Ahmednagar – Beed road, ad measuring 52 x 27 ft. It was the claim of the present appellants-original plaintiffs that the father of original defendants no.1 to 3 was in good terms with the father of plaintiffs no.1 to 4 and 6 to 9 and husband of plaintiff no.5 and as such, the property was orally let out in favour of the defendants N number of years ago. It is then claimed that father of plaintiffs No.1 to 4, 6 to 9 and husband of plaintiff No.5 was getting rent of Rs.1700/- per month to be paid on 10th day of each English calendar month.

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2. It is then stated that the cause for filing of the suit was non-payment of rent for last 5-1/2 years by the respondents-defendants. It was also claimed that the land was required for personal bonafide use. As the money claim was required to be restricted for the period of three years looking to the limitation prescribed, rent for last three years was claimed from 1st November, 1998 to 1st October, 2000, total amounting to Rs.61,200/-.

3. The suit was resisted by defendants no.1 to 3 by filing written statement at Exh.13, thereby denying the case of the plaintiffs and also a specific denial about existence of relationship of landlord and tenant. It was also claimed that the boundaries stated were incorrect. In addition, a stand was taken by the respondents-defendants that 6 R land out of survey No.553-A/1 was let out by the plaintiffs and their ancestors.

4. Having regard to the controversy raised, learned trial Court framed issues and additional issues at Exh.17 and answered them accordingly, which read thus:-

Sr. No.	Issues	Findings
1.	Do plaintiffs prove ownership over the suit property?	In the affirmative.
2.	Do plaintiffs prove that suit property is let-out to defendant for monthly rent of Rs.1,700/-?	In the affirmative.
3.	Whether there is relationship as landlord	In the affirmative.

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	and tenant between plaintiff and defendant?	
4.	Do plaintiffs prove that they have validly terminated tenancy of defendants?	In the affirmative.
5.	Do plaintiffs prove that defendants are in arrears of rent since 5.1/2 yrs for amount of Rs.1,12,200/-?	In the affirmative.
6.	Whether plaintiffs are entitled to claim arrears of rent from defendants?	In the affirmative.
7.	Whether plaintiffs are entitled to claim possession of suit property from defendants?	In the affirmative.
8.	What order and decree?	As per final order.
	Additional Issues	Findings
1.	Do plaintiffs prove that they require suit property for their bonafide use?	In the affirmative.
2.	Who will suffer more hardship in decreeing suit rather than dismissing it?	Plffs will suffer more hardship.
3.	Do defendants prove that suit property is owned by Government and it is within 100 ft from the centre of road?	In the negative.

5. In support of their claim, the appellants-plaintiffs examined their power of attorney holder Syed at Exh.33, whereas the defendants examined defendant no.3 at Exh.65 and one Shripad Deshpande at Exh.92. The documentary evidence, such as Exh.34 mutation entry, map of property Exh.73, a document in relation to Gat No.921, Exh.88 map of Gat No.921, Exhs.76, 77, 78 and 80, the documents which were part and parcel of the record of the Tahsildar and Exhs.84 and 85 i.e. the order of the Taluka Inspector of Land Records and the property extract at Exh.85 was formed to be the basis for decreeing the suit. Amongst other, an important document that is sought to be relied upon is the judgment delivered by the learned Trial Court in Regular Civil Suit No.1095 of 1980, which was instituted by the appellants-plaintiffs against the State

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Government (Collector) declaring that the appellants were owners of the suit property and their possession that of tenants was protected.

6. The respondents-defendants, feeling aggrieved by the judgment and decree dated 24th January, 2005, directing them to hand over possession of the suit property to the plaintiffs and further directing them to pay arrears of rent of Rs.61,200/- along with interest at the rate of 6% per annum from the date of institution of the suit, was questioned in Regular Civil Appeal No.90 of 2005 before the learned District Judge, Ahmednagar. The appeal under Section 96 of the Code of Civil Procedure came to be allowed by judgment and decree dated 5th January, 2012. Thus, the present Second Appeal.

7. Mr Hon, learned Senior Counsel appearing on behalf of the appellants-plaintiffs would urge that the lower appellate court has failed to understand the scope and limitations within which it is required to re-appreciate the evidence and reach to a different decision. He would particularly rely upon the observations made by the Apex Court in paragraph 15 of the judgment in the matter of **Santosh Hazari vs. Purushottam Tiwari (deceased) by L.Rs.**, reported in **AIR 2001 SC 965**, so as to substantiate his above referred contention. He would urge that while writing a judgment of reversal by the appellate court, it is required to be conscious of the principle that in case of conflicting evidence, the findings arrived at by the Trial Court must weigh with the appellate court while deciding the appeal. In addition, he would urge that while reversing

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the findings of fact by the appellate court, the appellate court must deal with the findings recoded by the Trial Court and then assign its own reasons for arriving at a different findings. He would urge that the appellate court has acted exactly contrary to the above referred observations. In addition, Mr Hon would rely upon the judgment of the Trial Court in Regular Civil Suit No.1095 of 1980 instituted by the appellants against the Government, to which respondents-defendants were not parties so as to urge that once there is a declaration by the civil court in favour of the appellants-plaintiffs about the ownership of the suit property, the said judgment binds the respondents-defendants as respondents-defendants are not coming out with a plea that they are owners of the property. According to him, even based on the oral and documentary evidence at Exhs.84, 85, 76, 77 and 88, the findings recorded as regards ownership of the appellants are upset by the learned lower appellate Court without any reasons. According to him, the aforesaid grounds are required to be given colour of substantial questions of law and the appeal needs to be considered on merits.

8. Per contra, Mr Wagh, learned Counsel appearing on behalf of respondents-defendants would urge that the findings recorded by the lower appellate Court are just, proper and in consonance with the evidence, particularly oral and documentary brought on record. He would take me through the judgment of the lower appellate Court so as to substantiate his contention that the appellate Court has in fact considered the findings recorded by the trial Court and based upon evaluation of the same in the

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backdrop of the evidence on record, has reversed the findings. Mr Wagh then would urge that the judgment in the another Regular Civil Suit No.1095 of 1980 between the appellants and the State Government would not bind the respondents-defendants as they were not parties to the said proceedings. According to him, the appeal lacks merit and is liable to be rejected.

9. With the assistance of both the respective Counsel, I have perused the original record in the present matter. I have categorically perused the documents at Exhs.76, 77, 78, 80, 84 and 85 which were formed to be the basis for recording a finding of ownership in favour of the appellants by the Trial Court. So far as the above referred documents are concerned, it is required to be noted that the document Exh.76 is a statement of the defendant, in which there is no admission as regards the ownership of the appellants over the suit property. Exhs. 78 and 79 are the documents of which the respondents-defendants are neither authors nor do they admit the ownership of the appellants-plaintiffs. Exh.80 is statement of one Shaikh Nayyum Shabbir Subhedar which was recorded before the Tahsildar. In the said statement also the ownership of the appellants is neither admitted nor demonstrated. Exh.84 is the order passed by the Taluka Inspector of Land Records on 29th January, 2003 and Exh.85 is an entry to that effect in the record of rights. However, if all these documents are read in the light of the oral evidence brought on record, they nowhere take this Court to the conclusion that the appellants have established ownership over the suit property. Though learned Senior Counsel Mr Hon

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would rely upon the revenue entries, particularly the 7/12 extracts, still such entries are only for fiscal purpose and cannot be termed to be conferring rights of ownership on the appellants, which is a settled position of law.

10. The lower appellate Court, while dealing with the said issue has rather considered the findings recorded by the Trial Court and upon analysis, has recorded a finding that the appellants have failed to establish their ownership over the suit property. The findings recorded, particularly *qua* point Nos. 1, 2 and 4 by the lower appellate Court, while analyzing the oral and documentary evidence, is required to be appreciated.

11. Apart from above, the appellants have come with a case that it was their father who had inducted the respondents-defendants as tenants and was receiving rent and passing appropriate receipts thereof. Neither any rent receipt nor any documentary evidence so as to infer the landlord-tenant relationship was placed on record, but for the oral statement which was denied by the respondents-defendants.

12. Apart from above, the findings recorded in Regular Civil Suit No.1095 of 1980 on 13th June, 1994 which is at Exh.81 does not bind the respondents-defendants as they were not parties to the said proceedings.

13. In the backdrop of above, the contention of the learned Senior Counsel that the lower appellate Court has committed an error apparent on the face of the record does not appear to be of any substance. In view

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thereof, the Second Appeal does not involve substantial question of law and thus stands dismissed with no order as to costs.

14. In view dismissal of second appeal, pending civil applications do not survive and stand disposed of accordingly.

15. At this juncture, Mr Wagh, learned Counsel appearing on behalf of respondents-defendants would submit that the amount of rent, which is deposited before this Court, be ordered to be refunded to the respondents-defendants.

16. In case, if there is no protection from the Apex Court within the appeal period, the respondents-defendants will be entitled to withdraw the said amount after the appeal period is over.

17. At the request of learned Senior Counsel Mr Hon, appearing on behalf of the appellants, the interim protection shall continue for a period of six weeks from today.

(N.W. SAMBRE, J.)

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