

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 680 OF 2015**

WITH

CIVIL APPLICATION NO. 1443 OF 2015

Anant Sadashiv Sagvekar

... Appellant

Vs.

Mohan Govind Dhariya

....Respondent

Mr. Kartikeya B., instructed by Kranti L.C. Appellant/Applicant.

Mr. S.M. Oak, instructed by Mr. Sagar Joshi for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 2nd JUNE, 2017

P.C.:

1. The Appellant (Original Defendant) is a lessee/tenant of premises admeasuring 20 x 15 sq.ft. in Gram Panchayat House No. 297, standing on the land bearing City Survey No. 288 situate at Dasgaon, Tal. Mahad, Dist. Raigad (the suit premises) at a monthly rent of Rs. 150/-.
2. The Respondent (original Plaintiff) who is the landlord of the suit premises issued notice on 30th December, 2004 thereby determining the lease on and from 31st January, 2005 and also asked for handing over possession of the suit premises. The said notice was received by the Appellant on 1st January, 2005. By his reply dated 29th January, 2005, the Appellant refused to comply with the said notice.
3. On 3rd February, 2005, the Respondent therefore filed Suit No. 6 of 2005 in the

Court of Civil Judge, Junior Division, at Mahad, inter alia, for possession of the suit premises. The Appellant appeared in the said suit and filed his written statement seeking dismissal of suit, inter alia, contending that Gram Panchayat House No. 297 is neither mentioned in the sale deed dated 19th August, 2004 nor mentioned in rectification deed dated 4th November, 2004. The Appellant further contended that he has never defaulted in paying the rent. Every month he used to visit the Respondent for paying the rent. However, the Respondent refused to accept the same. Therefore the rent of August and September, 2004 was sent by money order, which was refused by the Respondent.

4. In the light of the pleadings the trial Court framed issues and after considering the oral and documentary evidence the trial Court held that the Respondent is the owner of the Gram Panchayat House No. 297 and the Appellant is the lessee/tenant with respect to the suit premises on the Gram Panchayat House No. 297. It was also held that the Respondent by notice dated 30th December, 2004, determined the lease of the Appellant with respect to the suit premises and that the said lease is determined by complying the requirements prescribed by Section 106 of the Transfer of Property Act, 1882. The trial Court therefore decreed the suit vide its judgment dated 23rd August, 2010.

5. In the Regular Civil Appeal No. 48 of 2010 filed by the Appellant impugning the Judgment dated 23rd August, 2010, the District Court held that the provisions of Section 106 of the Transfer of Property Act, 1882 have been complied with by the

Respondent issuing a notice to the Appellant and determining the lease on and from 31st January, 2005. The Appeal Court has also recorded its findings on the basis of the evidence of the son of the Appellant viz. that the Appellant is the tenant of the suit premises and has no concern qua the open space in existence towards, eastern, western and southern sides of the Gram Panchayat House No. 297. In the light of the said findings, the Appellate Court dismissed the Appeal by its Judgment dated 30th January, 2015.

6. Being aggrieved by the said judgment of the Appellate Court dated 30th January, 2015, the Appellant has filed the above Second Appeal impugning the same.

7. The Learned Advocate for the Appellant has submitted before this Court that there is a mistake in the sale deed dated 19th August, 2014 regarding the City Survey Numbers. It is submitted that Gram Panchayat House No. 297 is shown to be situated on Survey Nos. 361 and 362 though the Gram Panchayat House No. 297 is actually situated on City Survey No. 288. Since the said mistake is rectified by a rectification deed dated 4th November, 2004, I see no substance in the submission advanced on behalf of the Appellant. There is therefore no question of law much less a substantial question of law involved in the above Second Appeal. The Second Appeal is therefore dismissed. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the same is accordingly disposed off.

(S.J.KATHAWALLA, J.)