

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

SECOND APPEAL NO. 220 OF 1995

Suresh Gulabhai Desai

(since deceased through his heirs and LRs.

1A) Sunita Suresh Desai & Ors.

...Appellants

vs.

Chhabildas Laxman Bhavsar,

since deceased through his legal heirs

and representatives

1A) Ashok Chhabildas Bhavsar & Ors.

...Respondents

Mr.Milind Sathaye for Appellants.

Mr.Nitin Mulye for Respondent No.1A, 1B(i) to 1B(vi) and 1C.

CORAM : S.C. GUPTE, J.

24 FEBRUARY 2017

P.C.:

After the matter was heard at some length, it is agreed between Counsel, on instructions of their respective clients, that whilst the operative part of the appellate court order can stand, certain observations, which are referred to hereinbelow, shall stand deleted from the impugned order of the first appellate court. It is made clear that whilst dealing with these observations, this court has not applied its mind to the merits of the observations. The observations are deleted simply on the footing that the subject matter of the first appeal did not include within it the matters referred to in these observations. The following observations shall, accordingly, be deleted from the impugned judgment and order :

- (i) “Even it is assumed that the suit property was given to the father of plaintiff for doing business in wood, that does not prove the fact that said purpose would survive in favour of

present plaintiffs after death of their father and that would be enforced against the purchaser-defendant.”

- (ii) “Legal consequence of this would be that he would have no right to claim any damages or right to continue under previous lease unless subsequent defendant landlord accepts the plff.”
- (iii) “The findings of lower court that the lease of plaintiff-respondents have not been terminated by efflux of time in the year 1958, has not been based on legal concept of determination of lease within the meaning of section 111-A of Transfer of Property Act.”

2 It is made clear that all rights and contentions of the parties on merits in respect of the leasehold rights, which are referred to in the observations quoted above, are kept open.

3 The rest of the impugned judgment and order is not disturbed.

4 The second appeal is, accordingly, disposed of.

(S.C. GUPTE, J.)