

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.10 OF 2016
WITH
CIVIL APPLICATION NO.11 OF 2016**

Rajendrasinh Vaikramsinh Mohite ... Appellant/Applicant
Versus

M/s Sagar Ceramics, Kolhapur
Partnership firm through its partners
(i) Sanjay Rabhunath Kshirsagar
And Another

... Respondents

Mr. P.D. Dalvi for the Appellant/Applicant.
None for the Respondents.

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CORAM : S.C.GUPTE, J.

DATE : 14 MARCH 2017

P.C. :

Heard learned Counsel for the Appellant.

2 The second appeal impugns the judgment and order passed by the District Court at Kolhapur in Regular Civil Appeal No.409 of 2012. By this judgment and order, the learned District Judge dismissed the appeal filed by the Appellant herein and confirmed the decree passed by the Court of the Civil Judge, Junior Division at Kolhapur in Regular Civil Suit No.72 of 2011, decreeing the Respondents' suit for recovery of possession.

3 The Respondents (original Plaintiffs) filed a suit for possession based
on their title alleging that the Appellant (original Defendant) was

unauthorisedly occupying the suit premises. The suit premises consist of three rooms, which are said to be unauthorisedly occupied by the Defendant. The Trial Court found that the Plaintiffs were the owners of the suit premises and the Defendant was occupying the same without any authority. The Trial Court, accordingly, passed a decree of possession against the Defendant. This order was confirmed in appeal by the Lower Appellate Court. The only substantial questions of law pressed by learned Counsel for the Appellant before this Court are that (i) the Defendant's predecessor-in-title, one Kusum Darshani, was a tenant in respect of the suit premises and that despite accepting her to be such tenant, the Plaintiffs filed the present suit under general law and not under the Rent Act, and (ii) none of the legal heirs of the deceased Kusum Darshani has been joined as a party defendant to the present suit.

4 This Court has perused the plaint filed in the Trial Court. The plaint does not accept the deceased Kusum Darshani as a tenant of the suit premises. Though it refers to the possession of the deceased Kusum Darshani, it does not accept her tenancy of the suit premises. Ever since the purchase of the suit property by the Plaintiffs, the deceased Kusum Darshani never paid any rent in respect of the suit premises to the Plaintiffs. It is submitted that considering the advanced age and destitution of the deceased Kusum Darshani, the Plaintiffs did not take any legal steps against the deceased. The plaint further shows that after Kusum Darshani died, the Defendant illegally and unauthorisedly entered into, and locked, the suit premises, claiming possession thereof. The plaint accordingly seeks a decree of possession against the Defendant on the Plaintiffs' title.

5 None of the Courts below has found that the deceased Kusum Darshani was a tenant in respect of the suit premises. In the premises, there is no question of the Plaintiffs' having to apply for a decree of eviction against the legal heirs of the deceased Kusum Darshani under the Rent Act. In any suit based on title, all that the plaintiff has to do is to prove his title and show that the defendant is in possession of the suit premises contrary to the plaintiff's title, it is then for the defendant to show the authority of his possession. Both Courts below have come to a concurrent finding that the Defendant is in unauthorised occupation of the suit premises. No substantial question of law arises from this finding.

6 Since there is no case of tenancy as against the deceased Kusum, there is no question of joining any of her legal heirs as parties to the suit, which is purely based on the Defendant's acts in unauthorisedly entering into, and locking, the suit premises. No substantial question of law arises on this score either.

7 The Second Appeal is, accordingly, dismissed. No order as to costs.

8 In view of the dismissal of the Second Appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)