

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

**SECOND APPEAL NO. 164 OF 2015
ALONGWITH
CIVIL APPLICATION NO.335 OF 2015**

Vivek Chandanmal Jain ..Appellant/Orig.Deft.No.1
vs.
Kausar Ismil Shaikh,
(Deceased) through his legal heirs
A) Smt.Parvin Kausar Shaikh & Ors. ...Respondents/Resp.Nos.1 and 2-
Orig.Plaintiffs; Resp.No.3-Orig.
Defendant No.2.

Mr.P.S. Dani, Senior Advocate I/b. Prashant Bhavake for Appellant.
Mr.M.K. Irani I/b. A.B. Tajane for Respondent Nos.1 and 2.

CORAM : S.C. GUPTE, J.

8 FEBRUARY 2017

P.C.:

Heard learned Counsel for the parties.

2 This second appeal challenges a judgment and order passed by the District Court at Pune. By the impugned judgment and order, the District Court dismissed the appeal filed by the Appellant herein, thereby confirming the judgment and decree passed by the Civil Judge, Junior Division at Pune decreeing the suit filed by Respondent Nos.1 and 2.

3 The suit was for recovery of possession of the suit property from the Appellant herein (Original Defendant No.1 to the suit). It was the case of the original Plaintiffs before the trial court that there was a development agreement between Respondent No.3 herein (original Defendant No.2) and the Plaintiffs in respect of properties including the

suit property but that this development agreement was cancelled. As part of the cancellation agreement, the Plaintiffs were to pay a certain amount to Defendant No.2. In pursuance of this agreement, Defendant No.2 handed over possession of the land given to him for development, save and except the suit property. The Plaintiffs had, in pursuance of the cancellation agreement, called upon Defendant No.2 to accept the balance consideration for cancellation and make over the possession of the suit property to the Plaintiffs. In the meantime, the Appellant herein (original Defendant No.1) started claiming possession of the suit property, alleging that the possession was given to him by Defendant No.2. The suit was resisted by Defendant No.1 on the ground that there was oral agreement between him and original Defendant No.2 for purchase of the suit property and that in pursuance of this oral agreement, consideration was paid by him to Defendant No.2. Defendant No.2, on the other hand, admitted the entire claim of the Plaintiffs and also denied the alleged oral agreement between him and Defendant No.1. The trial court came to a categorical finding that there was no oral agreement between Defendant No.1 and Defendant No.2 and that at the most, the former was a licensee of the latter. (It was the case of Defendant No.2 that Defendant No.1 was merely allowed to enter the suit property for keeping his machinery.) Since the cancellation of the original development agreement and his liability to hand over possession of the suit property was admitted by Defendant No.2, there is no case for Defendant No.1 to hold on the suit property. He had no right to the suit property. The trial court, in the premises, decreed the Plaintiffs' suit. This finding has since been confirmed, as noted above, by the first appellate court by holding that the Plaintiffs had proved their title to the suit property as well as trespass thereupon by Defendant No.1. The impugned judgment and order of the first appellate court, which contains

concurrent findings of fact, does not give rise to any substantial question of law.

3 The only ground urged by the Appellant before the first appellate court is that there was no case of cancellation of the original development agreement between Plaintiffs and Defendant No.2 and delivery of possession by Defendant No.2 to the Plaintiffs. These are matters between the Plaintiffs and original Defendant No.2. Original Defendant No.2 having accepted the Plaintiffs' case fully, there is no valid defence on account of cancellation of the development agreement and the liability of Defendant No.2 to make over possession of the suit property to the Plaintiffs. Original Defendant No.1, having no independent right to the suit property either through the Plaintiffs or Defendant No.2, cannot urge this ground.

4 Accordingly, there is no merit in the second appeal. The second appeal is dismissed. No order as to costs.

5 In view of the dismissal of the second appeal, the civil application does not survive and the same is also dismissed.

(S.C. GUPTE, J.)