

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.45 OF 2017
WITH
CIVIL APPLICATION NO.1873 OF 2015
IN
SECOND APPEAL NO.45 OF 2017**

Manohar Jagannath Kanekar

...Appellant

vs.

Smt. Sitabai Sudam Loke (Deceased Thr. Legal
Heir Shri Shivaram Sudam Loke)

...Respondent

....

Mr. Amogh Karandikar, a/w. Mr. A.S. Khandeparkar, I/b. Khandeparkar
& Associates, for the Appellant.

Mr. Aniket P. Ranande, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED : 17 JANUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges a judgment and order dated 22 September 2015 passed by the District Court, Sindhudurg in Regular Civil Appeal No.91 of 2010. By this order, the learned District Judge dismissed the Regular Civil Appeal filed by the Appellant herein from the judgment and decree dated 2 July 2010 passed by the Civil Judge, Junior Division, Deogad. The decree was passed by the Trial Court on the Respondent's suit, which was for eviction of the Appellant, claimed to be a tenant of the Respondent, on the ground of arrears of rent as well as

bonafide requirement of the Respondent. Both courts below found in favour of the Plaintiff as far as the relationship of landlord and tenant between the parties is concerned. Both courts also found against the Appellant on the question of arrears of rent and eviction notice served by the Respondent on the Appellant on the basis of such arrears.

3. The only contention raised by learned Counsel for the Appellant in this Second Appeal is about the existence of relationship of landlord and tenant between the parties. It is submitted by learned Counsel for the Appellant that the Respondent was not the landlord of the Appellant. It is submitted that the landlord of the premises was one Madhusudan Soman. It is submitted that the title to the properties is claimed by the present Respondent on the basis of two sale deeds, through which the Respondent's grandfather claimed to be the owner of the property, which was passed on to the Respondent's mother through the last will and testament of the grandfather and which came to the Respondent in intestate succession upon the death of his mother. It is submitted that there is no proof of this will tendered by the Respondent and that both the courts below have come to the conclusion that the will not was proved.

4. What emerges from the record and what is accepted by both courts below is that though originally one Madhusudan Soman was the owner of the suit property, the same was purchased first by Sau. Laxmibai Dattatraya Walunj and later by the grandfather of the Plaintiff, one Krushna Janardan Jogal. The sale deeds were duly proved before the courts below. There can hardly be any dispute now that the owner of

the property was Krushna Janardan Jugal as far back as on 29 March 1952. It is impossible to believe that the Appellant was paying rent to Madhusudan Soman through the years between April 1952 and July 2002. (There are arrears claimed from August 2002 to October 2002). As far as the will of the grandfather is concerned, i.e. dated 8 October 1965, the grandfather expired in the year 1966. Even if this will is not proved, the Respondent's mother Bhikubai Krushna Jugal (her name after marriage was Sitabai Loke) was the only daughter of Krushna Janadardan Jugal. The conclusion of the courts below that after the death of grandfather Krushna Janardan Jugal and Bhikubai Krushna Jugal @ Sitabai Loke, the Plaintiff has become exclusive owner of the suit property, cannot be faulted as suffering from any error of law.

5. As for the Appellant's claim that he was paying rent to Madhusudan Soman, the first Appellate Court has found that the Appellant was not able to produce any document to show either that agreed rent for the suit premises between the Appellant and his predecessors on the one hand and Madhusudan Soman was Rs.72 per annum or that (page 21) any such rent was paid by the Appellant or his predecessors to Madhusudan Soman. This, again, is a conclusion of facts, based on appreciation of evidence before the Court. No error of law is shown in respect of this finding.

6. The ownership of the Plaintiff and the existence of relationship of landlord and tenant as to the Plaintiff and Defendant are matters of fact or at any rate mixed issues of facts and law. The conclusions of the courts below are based on evidence; no relevant

material or document was disregarded and no irrelevant or non-germane material or circumstance was considered by the courts below to arrive at their conclusions. In the premises, the Second Appeal does not disclose any substantial question of law.

7. There is, thus, no merit in the appeal. The appeal is dismissed with 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.)