

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

**SECOND APPEAL NO.158 OF 2016
WITH
CIVIL APPLICATION NO.1996 OF 2015
IN
SECOND APPEAL NO.158 OF 2016**

Shri Irranna K Achmeti

... Appellant/Applicant

VS.

Shri Maruti K. Achmeti

... Respondent

Mr. Kalpesh Patil i/b Mr. Ashwinikumar R. Kapadnis for the Appellant/Applicant.

Ms. Rina Kundu for the Respondent.

Coram : **A.A. Sayed, J.**

Date : 15 November 2017

P.C. :

1 The challenge in this Second Appeal under section 100 of the Code of Civil Procedure, 1908, is to the judgment and order dated 4 September 2015 passed by the District Court in Appeal confirming judgment and order dated 29 April 2014 decreeing the suit and directing the Appellant/original Defendant to handover possession of the suit property to the Respondent/original Plaintiff within three months and to pay ad-volerem court fee of Rs.77,500/-.

2 The suit was filed by the Respondent/original Plaintiff inter alia for directions against the Appellant/original Defendant to vacate the suit

premises which consists of two rooms. For the sake of convenience, the Appellant is hereinafter referred to as the Defendant and the Respondent referred to as the Plaintiff.

3 The case of the Plaintiff was that he purchased the plot of land, wherein suit premises is situate, by registered sale deed dated 15 May 1985. He constructed four rooms ad-measuring 525 square feet. On the request of the Defendant, who is his younger brother, he had given two rooms to him on temporary basis with an understanding that whenever the Plaintiff requires the same he would vacate and handover the possession of these two rooms to him. Despite calling upon the Defendant to hand over possession of these two rooms to the Plaintiff, the Defendant failed to do so and started harassing the Plaintiff and his family members. Two notices for eviction were issued on 28 July 2004 and 31 July 2004 to the Defendant, however the Defendant refused to vacate. Hence, the suit for eviction.

4 The case of the Defendant on the other hand was that he had purchased the plot of land jointly with the Plaintiff and he had contributed to the amount of consideration and they had jointly constructed four rooms on the said plot and he was joint owner of the suit premises. He is in possession of two rooms in the suit premises and the electric meter, ration card etc. are standing in his name. The Plaintiff being his elder brother, the sale deed was executed in his

name. Though he demanded partition of the suit premises, the Plaintiff avoided the same. He was continuously in possession of the suit premises for about 15 years.

5 After hearing the parties and appreciating the evidence on record, the trial Court decreed the suit and directed the Defendant to handover the suit premises to the Plaintiff within three months. An Appeal against the decree of the trial Court was preferred by the Defendant. The District Court after reappreciating the evidence confirmed the decree of the trial Court.

6 The trial Court arrived at finding of fact that the documents produced by the Plaintiff reveal that the Defendant is residing in the suit premises on permissive use and that the Defendant has not produced a single document to show that he has paid taxes to the Municipal Corporation. It was admitted by the Defendant in his cross-examination that he was minor at the time of purchase of the suit property. The District Court after reappreciating the evidence observed that the Defendant has miserably failed to prove his title and concluded that the Plaintiff was the owner of the entire suit premises and he is entitled for vacant possession of two rooms occupied by the Defendant.

7 It is seen that both the Courts below have concluded that the suit premises belonged to the Plaintiff. The Defendant had admitted in his

deposition that he was minor at the time of purchase of the suit property by the Plaintiff. The Courts below concluded that the Defendant being younger brother of the Plaintiff was residing in two rooms merely as a permissive user. In my view, both the Courts below have arrived on concurrent finding of facts and no question of law, much less any substantial question of law arises in the Second Appeal. The Second Appeal is dismissed. There shall be no order as to costs.

8 The Civil Application does not survive and to stand disposed of.

(A.A. Sayed, J.)