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

***SECOND APPEAL NO. 164 OF 2017
with
CIVIL APPLICATION NO. 106 OF 2017***

Sambhaji Govind Upari.

... Appellant/Applicant.

V/s.

Shrimati Akkubai w/o. Dadu Dadarne.
(deceased through L.R.) and Ors.

... Respondents.

Mr. Bhooshan Mandlik i/b. S.S. Patwardhan for the Appellant.

Mr. Manoj Patil for Respondent 1-A.

Coram : N.M. Jamdar, J.

Date : 27 March 2017.

Oral Order :-

By this Second Appeal, the Appellant – Original Defendant, has challenged the judgments and order dated 28 February 2013 passed by the Civil Judge Junior Division, Panhala and the judgment and order dated 27 October 2016 passed by the learned District Judge, Kolhapur. The suit filed by the Respondent – Plaintiff is decreed and the Appeal filed by the Appellant has been dismissed.

2. By the impugned judgments and orders the Appellant – Defendant No.1 has been directed to hand over the vacant possession of the suit land. The suit was filed by the Respondent – Plaintiff on the ground that the Respondent – Plaintiff has become owner of the suit property as her husband had purchased the suit property by way of registered sale deed dated 7 June 1965. It was her case that taking advantage of the illiteracy of the Respondent – Plaintiff, the Defendant unauthorizedly occupied the suit premises. The suit was accordingly filed for seeking the possession of the suit property, which has been decreed.

3. The learned Counsel for the Appellant submitted that both the Courts have not considered the implications of the suit filed for injunction in the year 1992 and that it is incorrect to state that the Appellant had entered upon the suit property unauthorizedly. He submitted that the Appellant was put in possession by way of a lease agreement dated 23 May 1991, which was for the period of 20 years and it was not that the lease has not been terminated.

4. The Courts have framed issues as regard the claim of the Respondent – Plaintiff on title and ownership, so also the claim of the Defendant to the suit property. As regard the claim of the Respondent – Plaintiff to the suit property based on registered sale

deed dated 7 June 1965, both the Courts have concurrently held that the Respondent – Plaintiff had proved her title to the suit property. Nothing is shown to disturb the finding that the Respondent is the owner on the aspect of injunction, it cannot be ignored that the present suit is based on title. The Respondent – Plaintiff has established her title to the suit premises and therefore, it was upon the Appellant to demonstrate a legal right to continue in the suit property. As regard the alleged lease deed is concerned, the same has expired by efflux of time. Therefore, the Appellant has absolutely no right to occupy the suit premises.

5. In these circumstances, no question of law arises for consideration. Both the Courts have rightly concluded that the Respondent – Plaintiff being the owner of the suit property is entitled to the possession thereof. The Second Appeal is dismissed. The Civil Application does not survive and is disposed of accordingly.

(N.M. Jamdar, J.)