

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.383 OF 2016

RAMESH S/O BHAURAO AWACHAT
VS
BHAURAO S/O KISANJI AWACHAT

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R. A. Haque, Advocate for the appellant.
Shri Mahesh Masodkar, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 12, 2017.

The appellant is the original defendant in the suit filed by the respondent for possession of the suit house. It is the case of the respondent – plaintiff that he was the owner of House No.107/2 and had erected construction thereon. The appellant was his son and hence, he was allowed to reside in the house out of natural love and good faith. The appellant undertook certain renovations without his permission. The respondent demanded possession by issuing a notice on 26-4-2011 and as the same was not handed over, suit came to be filed seeking possession.

In the written statement, it was pleaded that the appellant was in possession on the basis of sale deed executed by the respondent in his favour in the year 2002.

After the parties led evidence, the trial Court

recorded a finding that the sale deed on the basis of which the appellant was claiming title was an unregistered document. It accepted the title of the respondent and decreed the suit. The appellate Court reaffirmed these findings and dismissed the appeal.

Shri R. A. Haque, learned Counsel for the appellant submitted that though the sale deed dated 12-6-2002 was an unregistered document, same could be taken into consideration for collateral purposes. He submitted that consideration of Rs.8000/- was given to the respondent who had thereafter sold the suit property to him. He then submitted that it was the case of the respondent that the appellant was permitted to reside in the suit house and hence, it was a case of grant of license. As the appellant had undertaken construction in the said premises, the license became irrevocable in view of provisions of Section 60(b) of the Easements Act. He relied upon the judgment of learned Single Judge in *Himmatrao Marotrao Dhobale and others vs. Arun Gulabrao Jichkar* 2015(2) *Mh.L.J.* 560. He, therefore, submitted that the suit was liable to be dismissed.

Shri Mahesh Masodkar, learned Counsel for the respondent supported the impugned judgment. According to him, as the sale deed was not registered both the Courts rightly excluded the same from consideration. The case of

the appellant with regard to irrevocable license in his favour was not pleaded in the written statement and hence, it was not liable to be considered. He referred to the judgment of learned Single Judge in *Mahadeo Tatu Naik vs. Ramakant Atmaram and another AIR 1985 Bombay 347* in that regard.

I have heard the learned Counsel for the parties and perused the documents filed on record. The only defence as raised in the written statement is with regard to sale deed being executed by the respondent in favour of the appellant. This sale deed was unregistered and, therefore, both the Courts rightly excluded taking the same into consideration.

In so far as the aspect of irrevocable license is concerned in the plaint it has been pleaded that the appellant was permitted to occupy the house as he was the son of the respondent and there was no other place for him to reside. In reply to the aforesaid para 2 of the plaint, the appellant specifically denied these aspects saying that the contents of said para were baseless and that they were false. The plea that pursuant to such license the appellant undertook substantial construction and, therefore, the license was irrevocable was not pleaded. In fact, the plea of license was denied by the appellant in the written statement. He has only relied on the sale deed. The observations of learned Single Judge in *Himmatrao Dhobale (supra)* do not assist the

case of the appellant in absence of any such stand being taken. On the contrary, as observed in *Mahadeo Naik (supra)*, the plea of irrevocable license not having been pleaded, the same cannot be raised in the second appeal for the first time.

The second appeal does not give rise to any substantial question of law. The same is dismissed. No costs.

JUDGE

/MULEY/