

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.420 OF 2016
WITH
CIVIL APPLICATION NO.817 OF 2016

Ashok Shripati Chavan Appellant-Applicant
V/s.
Shrikant Babu Aitawade & Ors. Respondents

ALONG WITH

SECOND APPEAL NO.701 OF 2016

Ashok Shripati Chavan Appellant-Applicant
V/s.
Dhondiram Pandu Chambhar (*Since Deceased*),
Through LRs.:-
Rukmini Dhondiram Chambhar & Ors. Respondents

Mr. Rajiv Chavan, Senior Counsel, a/w. Ms. Priyanka Chavan, i/by
Mr. Dhairyasheel Sutar, for the Appellant-Applicant.

Mr. Joel Carlos, a/w. Mr. Yatin Malvankar, for Respondent Nos.1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7TH JUNE, 2018.

P.C. :

1. Heard learned counsel for the Appellant-Applicant and Respondents.

2. There is concurrent finding of fact arrived at by the Trial Court,

which is confirmed by the First Appellate Court, that the subject document in the case is a 'Mortgage Deed', and not a 'lease', as contended by the Appellant. This finding of fact is based on appreciation of evidence on record. The evidence on record, the contents of the documents and attending circumstances, coupled with the admission given by the Appellant himself that the transaction is in the nature of '*Fedit Gahan Khat*', everything is considered by the Trial Court and thereafter, the Appellate Court has again re-appreciated it and concluded that it is a document of mortgage and there is no question of tenancy.

3. In view thereof, when the Judgment of the Trial Court and the Appellate Court is based on appreciation of evidence and no illegality or perversity as such is also pointed out in the same, in the present Second Appeals, this Court cannot re-enter into the same as if it is a “third Court of facts”. No case is made out, therefore, for admission of the Second Appeals. Hence, both the Second Appeals stand dismissed.

4. In view of the above, Civil Application No.817 of 2016, pending in Second Appeal No.420 of 2016, does not survive and the same is disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]