

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.808 OF 2017
ALONG WITH
CIVIL APPLICATION NO.1512 OF 2017

Kairunbee Mahammad Yasin Shaikh	 Appellant-Applicant
V/s.	
Gousoddin Abbas Ali Shaikh	 Respondent

Mr. Drupad S. Patil for the Appellant-Applicant.

Mr. Tejas D. Deshmukh for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD JULY 2018.

P.C. :

1. Heard Mr. Patil, learned counsel for the Appellant-Applicant, and Mr. Deshmukh, learned counsel for the Respondent.

2. This Second Appeal is preferred against the concurrent finding of fact recorded by the Trial Court and the Appellate Court and according to it, Respondent is having better title to the suit property, as he has paid the consideration amount thereof and it was deducted from his pension amount. In the Society record also, the name of the Respondent is standing.

3. Appellant is the sister of the Respondent and, therefore, out of the relationship of love and affection, Respondent has allowed the Appellant to occupy the suit premises. However, thereafter, Appellant is not vacating the same. Hence, both the Trial Court and the Appellate Court had decreed the Suit of the Respondent.

4. The only submission advanced by learned counsel for the Appellant is that, in the plaint itself, the Respondent has stated that, this is a Suit for possession of the suit premises from the licensee and hence, it is urged that, the Civil Court cannot have jurisdiction to entertain the Suit. However, both the Trial Court and the Appellate Court have considered that, nowhere in the plaint, Respondent has mentioned that the suit premises were given to the Appellant as a licensee and he has received the license fee. Appellant herself has not entered into the witness box to substantiate her case. Therefore, if only on account of the poor economic condition of the Appellant, she was allowed to remain in possession of the suit premises, she cannot claim the status of licensee.

5. Both the Trial Court and the Appellate Court had, therefore, allowed the Suit filed by the Respondent, upon arriving at the concurrent finding of fact, which cannot be disturbed in this Second Appeal and which is based on the evidence on record.

6. This Second Appeal, therefore, being devoid of merits, stands dismissed.

7. In view of dismissal of the Second Appeal, Civil Application No.1512 of 2017 pending therein, does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]