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

***SECOND APPEAL NO. 864 OF 2017
with
CIVIL APPLICATION NO. 1797 OF 2017***

Smt. Laxmibai Dhondiram Chandanwale. ...Appellant/Applicant.

V/s.

Shamrao Dnyandev Kshirsagar & Ors. ... Respondents.

Mr. Pradip R. Kadam for the Appellant/Applicant.

Mr. Surel Shah i/b. Manoj A. Patil for Respondents 1 to 5.

CORAM : N.M. Jamdar, J.

DATE : 30 January, 2018.

Oral Order :-

Heard learned Counsel for the Appellant.

2. The Appellant – Plaintiff filed a Regular Civil Suit No. 1752 of 2012 seeking an order of injunction in the Court of Civil Judge, Junior Division, Kolhapur. A suit was decreed by judgment and order dated 12 May 2016 and injunction was granted. The Respondents had filed a counter-claim seeking possession of the

property which was dismissed. An Appeal was filed by the Respondents bearing No. 162 of 2016 in the District Court, Kolhapur. The learned District Judge, by judgment and order dated 14 February 2017 allowed the Appeal, dismissed the Suit and directed the Appellant – Plaintiff to hand over possession of the suit property.

3. The learned Counsel for the Appellant submitted that the Appellant had filed a suit for simplicitor injunction and had not claimed in declaration as regard tenancy and therefore rightly the learned Civil Judge has not framed any issue as regard tenancy. He submitted that the admissions have been given by the co-owner in respect of the tenancy rights of the Appellant – Plaintiff. It was also contended that the Appellant paid Municipal taxes and electricity bills, which was considered as a rent. The learned Counsel for the Respondents supported the impugned order.

4. The Respondents had filed a counter-claim seeking possession of the suit property, which is granted by the impugned order. The Respondents are held to be the owners of the property and nothing is shown as to how this finding is incorrect. The Respondents, being the owners of the suit property, are seeking possession of the same. Therefore, the Appellant will have to show a legal right if this decree is to be reversed.

5. The case of the Appellant in the plaint is of tenancy. In the cross-examination the Appellant has given various admissions. She has stated that she and her husband saw an open piece of land and erected a shed and started residing therein and nor anybody asked for any rent neither they paid any rent. Since the authorities of the Municipal Corporation came to ask for taxes, they have paid the same. In view of this clear admission, there is no question of the Appellant being tenant in the suit property.

6. The contention that the co-owner has given admission in favour of the Appellant is based on the property extract, which allegedly shows him as a co-owner. However, this witness examined by the Appellant does not claim himself to be a co-owner, but a neighbour of the suit property. In fact, the entire case advanced in both the Courts was on the premises that this witness is a neighbour. His evidence has been analyzed. He has also given various admissions that he does not know in which year the tenancy was created. He does not even know the concept of tenancy. Therefore, the learned District Judge rightly held that the issue of tenancy could not have been side stepped by the learned Civil Judge as it was the foundation of the case of the Appellant.

7. It is not only against the dismissal of the suit for injunction that the Appellant has filed the Second Appeal, but also

against the grant of counter-claim seeking possession. Nothing is shown that the Appellant has any legal right in the suit property. In the circumstances, no question of law arises for consideration.

8. Considering the fact that this was the state of evidence, it was put to the learned Counsel for the Appellant that if the Appellant is not contesting the appeal on merits, the Court may consider granting longer time to vacate the premises to the Appellant. For that purpose the matter was also adjourned to take instructions. The learned Counsel for the Appellant submitted that he has received instructions from the Appellant who is present in the Court that the Appellant is not desirous for seeking such longer time to vacate and has intend to contest the matter on merits.

9. The learned Counsel for the Appellant submitted that an amendment application was made in respect of the tenancy right of the Appellant in the Trial Court however even in this amendment application there is no reference to any document showing tenancy. The learned Counsel for the Respondents pointed out that when the amendment was refused, there were no cross-objections filed challenging the order.

10. In the circumstances, the Second Appeal is dismissed. The Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)