

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

932 SECOND APPEAL NO.351 OF 2019

SHAMRAO DADU WAGHMARE

VERSUS

ASHABAI BHAU AVCHITTE

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Advocate for Appellant : Mr.R.P.Phatke

Advocate for Respondent : Mr.N.D.Batule

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**CORAM : V.L.ACHLIYA, J.**

**DATE : 25.09.2019**

**PER COURT:**

1] Being aggrieved by the concurrent decisions rendered by the Courts below, the appellant has filed this Second Appeal.

2] Heard the learned counsel for the appellant and the respondent. Perused the impugned judgments and orders passed by the Courts below.

3] In brief, it is the contention of the learned counsel for the appellant that the reasons and findings recorded by the trial Court are perverse. The first appellate Court as well as the trial Court has failed to appreciate the evidence in its proper perspective. It is submitted that though the appellant-defendant has raised issue of limitation, the trial Court has not framed

the issue of limitation. It is contended that the appellant-defendant was put in possession of the suit premises initially as a tenant by the deceased mother in law of the respondent – plaintiff. The house in question was allotted to her as an employee of the Municipal Council. It is submitted that as per the policy formulated by the Municipal Council, the employees were given option to purchase the house in their occupation. The deceased mother in law of the plaintiff was not in position to purchase the house. She, therefore, sold the portion of house i.e. suit premises to appellant for consideration of Rs.7000/-. The appellant has paid Rs.7000/- to mother in law of respondent-plaintiff towards consideration of suit premises and also paid Rs.9,000/- to her mother in law towards occupation charges. In this background, it is contended that the appellant-defendant has acquired the right of ownership in respect of the suit premises by paying the amount of Rs.16,000/- to the deceased mother in law of the plaintiff. Learned counsel submits that the Courts below have not appreciated the evidence in its proper perspective and dismissed the suit as well as appeal. It is

contended that the reasons and findings recorded by Courts below are perverse. According to the learned counsel, appeal raises number of substantial questions of law.

4] On the other hand, learned counsel for the respondent-plaintiff supported the impugned judgment and decree passed by the Courts below and submits that no case made out to entertain Appeal. It is submitted that the appeal raises no substantial questions of law. It is pointed out that as per the registered sale deed executed by the Municipal Corporation in favour of respondent, she become owner of suit property. It is submitted that the appellant-defendant has failed to prove that the suit property was purchased by him from the mother in law of the plaintiff. It is submitted that the mother in law of the plaintiff was neither owner nor she had any right, title or interest to sell the suit premises in favour of the appellant-defendant.

5] On due consideration of the submissions advanced in the light of the judgment and decree passed by the trial Court and confirmed in Appeal, I am of the view

that the appeal filed by the appellant – defendant is devoid of merit. The appeal raises no substantial questions of law. It emerges from the record that the respondent – plaintiff is lawful owner of the suit property. There is no dispute as to the fact that conveyance in respect of the suit property has been executed in favour the respondent–plaintiff by the Municipal Corporation, Ahmednagar and she become owner of the suit property. At no point of time the ownership of suit premises vest with mother in law of respondent–plaintiff.

6] Although the appellant–defendant has approached with case that he has paid Rs.16000/- to the deceased mother in law of the respondent–plaintiff and purchase the suit premises in possession of appellant but there is absolutely no evidence produced to support the case of appellant – defendant. Except the oral statement of the appellant – defendant, there is no evidence to show that the suit property in question was purchased by appellant – defendant from the deceased mother in law of the respondent – plaintiff. The suit property being immovable property worth more than Rs.100/-, no transfer can be

made otherwise than a registered instrument of sale.

7]           The trial Court while appreciating the evidence closely scrutinized the evidence and recorded the findings that the respondent – plaintiff has become owner of the suit property by a registered sale deed dated 21.01.2003 and appellant – defendant is in unauthorized occupation of two rooms admeasuring 200 square feet forming part of the property owned and purchased by the plaintiff. The trial Court has also recorded, the appellant–defendant has failed to prove that he was put in possession of the suit property and become owner of suit property on payment of Rs.16,000/- to the mother in law of the plaintiff.

8]           In my view, the reasons and findings recorded by the trial Court are in consonance with the pleadings of parties and evidence adduced in the case. The First Appellate Court has thoroughly examined the matter in the light of the challenge raised in the appeal. The appellant has failed to produce evidence to prove that the suit premises was purchased by him from mother in law of respondent – plaintiff. Except bare words no

documentary evidence in the nature of registered sale deed produced by the appellant – defendant. In that view, there is no perversity in the impugned judgment and decree passed by the trial Court and confirmed in appeal. The appeal raises no substantial question of law. I am, therefore, not inclined to entertain the appeal. Accordingly, the appeal is dismissed. In view of dismissal of Appeal, no cause survives to prosecute the Civil Application seeking stay to the execution of the impugned judgment and decree. Accordingly, Civil Application seeking stay is disposed of in terms of order in appeal.

9] Learned counsel for the appellant–defendant urged to grant six months time to appellant to vacate the premises so as to enable the appellant–defendant to find out alternate accommodation.

10] Learned counsel for the respondent submits that reasonable time may be given to the appellant–defendant to vacate the premises provided the appellant files written undertaking to vacate premises on and before the date fixed by this Court.

11] Having regard to the fact that the appellant claims to be residing in the suit premises from the Year 1983, I am of the view that reasonable time be given to the appellant to vacate the premises. Accordingly, the appellant-defendant is granted six months time to vacate the premises on condition the appellant - defendant shall file written undertaking before the Executing Court within one week from date of this order to the effect that the appellant shall vacate and voluntarily surrender the premises to respondent-plaintiff within six months from the date of this order. In case such undertaking is filed, the Executing Court is directed to defer the further proceeding of execution of the decree for six months from date of this Court. Failure to file such undertaking by appellant within one week, the Executing Court will be at liberty to proceed with the execution proceedings.

12] The Appeal be marked as dismissed.

**[V.L.ACHLIYA]**  
**JUDGE**