IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2150 OF 2019
IN SECOND APPEAL NO. 63 OF 2018

Vishal Rajendrasingh Tiwari ...Applicant

Versus

Ranjit Pandharisingh Tiwari ...Respondent

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Mr. R. P. Adgaonkar, Advocate for Applicant.
Mr. V. D. Godbharle, Advocate for Respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-02-2019.

ORAL ORDER :

01. Advocate for the sole respondent submits that he has received the copy.

02. Heard both the sides. The present applicant is the appellant, who has filed second appeal challenging the concurrent Judgment and decrees by the Trial Court as well as the first Appellate Court asking him to hand over the vacant possession of the suit property. It has been contended that during the pendency of the first appeal, the respondent had filed suit for fixation and recovery of rent bearing rent suit No. 8 of 2015, which was contrary

to his own stand before the Trial Court, in which the decree of eviction has been passed and it is under challenge that he had granted permissive possession to the present applicant and therefore, he wants to produce on record the photo copy of the plaint in Rent Suit No. 8 of 2015. Secondly, the applicant contends that there was a partition amongst the family members, however, he could not put the said fact in legal format. He comes with case that joint family is still intact and in order to prove that still the family is joint, the recent transactions which has taken place in respect of Survey No. 271 are prayed to be brought on record. Those agreements or transactions have taken place on 18.9.2018. It is stated that these documents could not be produced before the Trial Court because the said documentary evidence sought to be produced on record is subsequent development and therefore, the applicant has prayed for permission to produce additional evidence.

03. The application has been objected on the ground that though there was a chance to bring those documents on record earlier, there was no attempt and therefore, the applicant can not invoke the provision of Order XLI Rule 27 of C. P. C.

04. It will not be out of place to mention here that

both the learned Advocates have argued in respect of their respective contentions. Especially, the learned Advocate appearing for the applicant submits that though the theory of permissive possession was pressed into service by the plaintiff by his own subsequent act of filing suit under Rent Act on 29.10.2015 would show that the possession was not permissive in nature and therefore, the decree under general provisions of Code of Civil Procedure can not be passed. He also submitted that though the plaintiff had come with a case that there was previous partition in the year 1981 as an effect of compromise decree, the said decree was not implemented. However, there was a subsequent partition in 1988. The applicant failed to prove the same as it is held by both the Courts below. However, the documents which have been produced at Exh. "B" would show that all the joint family members have executed document in respect of other plot numbers which is indicative of the fact that the family is still joint.

05. By this application two sorts of documents are tried to be produced on record. One is the plaint in Rent Suit No. 8 of 2015, which is filed on 21.10.2015 by the present respondent. The perusal of impugned Judgment and decree in R. C. A. No. 155 of 2014 would show that the said appeal was presented by the present appellant on

14.10.2014 and the said appeal came to be decided on 9.8.2017. Important point to be noted is that the appellant / applicant has not come with a case that he received the summons in the said rent suit after the appeal was decided on 9.8.2017. When the suit was filed on 21.10.2015 a judicial note can be taken that defendant in that proceeding that is the present appellant would have been served within a reasonable time, which again go in any circumstance beyond 9.8.2017. There was no hurdle for the present applicant to file the said copy of the plaint in the rent suit before the First Appellate Court. It can not be taken as a subsequent event as regards this appeal is concerned. Every opportunity was there for the applicant to produce the same on record before the First Appellate Court and for the reasons best known to the appellant, he did not take that opportunity. Under such circumstance, provision of order XLI rule 27 are not helpful to him.

06. As regards the documents at Exh. “B” are concerned, they are in the nature of agreement, receipts, executed on 18.9.2018. Definitely, they are subsequent documents, however, it is to be noted that the suit property which was before the Trial Court was plot No. 19 admeasuring South-North length 60 feet and East-West 50

feet situated in survey No. 85/1/A at village Khadgaon, Dist. Latur. Whereas these documents at Exh. "B", it appears that they are in respect of plot No. 22, 23 and 24 out of survey No. 71 just beyond the area of Latur city Municipal Corporation. That means the property is different. Another fact that is required to be considered is that according to the plaintiff, he had purchased the said plot No. 19 by way of registered sale deed dated 5.1.1982 for a consideration of Rs. 3,000/- and therefore, he was claiming ownership and then it is stated that he had given permission to the defendant to possess the suit property. Defendant had come with a case that the entire land and construction over plot No. 19 is a joint family property and it is purchased out of joint family income. He had then come with a theory of partition effected on 18.1.1998 and it is stated that half share from the suit property was allotted to him. Specific issue to that effect has been framed and it has been answered in the negative by both the Courts below. Now, when the defendant had come with a specific case of partition and then receiving half of the share in the suit property by him contemplates that he was claiming exclusive ownership over the half portion by virtue of partition deed. Impliedly he intended to convey that there was a severance

of status on 18.1.1998. Under such circumstance, those documents which according to him which he intends to produce on record are stated to be depicting still the jointness in the property is a contrary stand which can not be taken at all at this stage. Under such circumstance, these documents are not at all necessary for the decision of the second appeal. Hence, the application is rejected. Put the second appeal for admission on 5.3.2019. Statement to continue, till then.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-