

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

**SECOND APPEAL NO.22 OF 2017
WITH
CIVIL APPLICATION NO. 1916 OF 2012**

Smt. Gopabai Laxman Ghadge ... Appellant

Vs

Smt. Laxmibai Narayan Dudhane

Since deceased through heirs

1A Vilas Narayan Dudhane and Anr.

... Respondents

...

Mr. Ashok B. Tajane for the Appellant.

Mr. Milind Deshpande for the Respondent Nos.1A and 1B.

CORAM : SANDEEP K. SHINDE J.

DATE : 26 MARCH, 2019

P.C. :

Heard learned counsel for the parties. I will refer the parties as per their status in the suit.

2 This appeal is preferred by the defendant, against whom decree of possession has been drawn by the learned Joint Civil Judge, Senior Division, Solapur. The suit property is Block No.58/2B. It may be stated that the learned Judge declared plaintiff as owner of the suit block on title. The suit block is situated in Nehru Audyogik

Grihanirman Sanstha ('Society' for short). This decree came to be confirmed in Regular Civil Appeal No.91 of 2003. It is against the judgment and decree passed in Regular Civil Appeal, the defendant has preferred this Second Appeal.

3 Courts below have predominantly recorded finding of fact, that the plaintiff has established that the suit block was allotted to her deceased brother by the Society. Plaintiff had examined, chairman of the society who had produced on record letter of allotment and the resolution passed by the society showing that the suit block was allotted to the deceased brother of the plaintiff on 24th February, 1990. Plaintiff's brother passed away in December, 1992. He left behind the will of which, probate was obtained by the plaintiff. Evidence on record shows that the society after demise of plaintiff's brother recorded her name in the society's record and produced the resolution before the learned trial Judge. Thus, after considering the documentary and oral evidence of the plaintiff, Courts below have held that the plaintiff has established that the suit block was allotted to her brother for consideration which was paid

after availing loan from Finance Corporation.

4 It is the plaintiff's case that the defendant herein is occupying suit block unauthorisedly and declined to hand over possession during the life time of her brother and even after his demise and thus, instituted suit for possession and declaration.

5 The suit was resisted by the defendant on the ground that brother of the plaintiff declined to take possession for some reason; however, she could not prove her right of any sort to occupy the suit block. Power of Attorney of the defendant in evidence admitted that the suit block was allotted to brother of the plaintiff and not to the defendant. In the light of the evidence on record, Courts below have held that the defendant is trespasser and thus, decreed the suit for possession.

6 The learned counsel for the appellant would submit that suit was not maintainable in-as-much as it relates to the property of the society and thus touches the business of the society within the meaning of Section 91 of the Maharashtra Co-operative Societies Act, 1960.

7 It may be stated that the defendant has not disputed that suit block was allotted to brother of the plaintiff, however, she would contend, that brother of the plaintiff declined to take possession of the suit block since there was well in front his block. It may be stated at the cost of the repetition that the defendant could not prove her right to possess the suit block and, therefore, Courts below have correctly held that the defendant was trespasser.

8 Thus, taking into consideration facts of the case, in my view, suit was perfectly maintainable and the jurisdiction of the Civil Court was not ousted.

9 Appeal, therefore, does not give rise to any substantial question of law and it is dismissed. Civil application stands disposed of.

10 Though Appeal is dismissed, Appellant's possession in the suit block, protected by this Court, during the pendency of Appeal which shall continue to operate for four weeks.

(SANDEEP K. SHINDE, J.)