

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

**SECOND APPEAL NO.585 OF 2016
WITH
CIVIL APPLICATION NO.1176 OF 2016**

Ganesh Damodhar Koli and Anr. ... Appellants

Versus

Timir Damodhar Koli and Ors. ... Respondents

.....

Mr. Ajay S. Patil for the Appellants.

Mr. Prithviraj S. Gole I/b. Anusha P. Amin for the Respondents.

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CORAM : M. S. KARNIK, J.

DATE : 18th JULY, 2019.

P. C.:

1. Heard learned counsel for the appellants and learned counsel for the respondents.

2. The appellants are the original defendants. The respondents filed a suit for declaration that they are the owners of the suit premises bearing flat No.B-401 to 403, Karuna Apartment, 4th floor, Vitawa, Post Kalwa, Tal. & Dist. Thane.

3. It is the case of the plaintiffs that the defendants being brother was allowed to occupy flat No.403 on humanitarian ground. The respondents-defendants have no right to live or

occupy in the suit premises as the plaintiffs are the owners of the suit premises. The Trial Court decreed the suit and declared the plaintiffs to be owners of the said flats. It is further declared that the defendants have no right to live or occupy the suit premises. The defendants are therefore directed to leave the suit premises alongwith their children (if any) and with their belongings within two months from the date of decree. The First Appellate Court concurred with the findings of the Trial Court.

4. Learned counsel for the appellants-original defendants contended that the Courts below have committed an error in holding that the plaintiffs had permitted the defendants to occupy the suit premises for temporary period on humanitarian ground. He would submit that originally there was a cattle shed. The said cattle shed was demolished and the building was constructed by father of the plaintiffs and defendants. Towards the defendants shares in the suit property, the defendants were allotted flat No.403 and hence they were occupying the suit premises in their capacity as co-sharer. Learned counsel would therefore submit that the Courts below have not considered the evidence in the perspective.

5. I have gone through the findings of the Courts below. The Courts below on the basis of the evidence concurrently found that the plaintiffs are joint owners and in possession of the suit premises. Further on the basis of the evidence on record the Courts below came to a conclusion that the plaintiffs allowed the defendants to reside in the suit premises on humanitarian ground. Considering concurrent findings of fact recorded and as there is no evidence on record to support the contention of the defendants that towards their share in the suit property they have been allotted flat No.403, I do not find any reason to interfere with the concurrent findings recorded by the Courts below. Learned counsel for the respondents, on instructions informed that the defendants have now left the suit premises and therefore the decree is satisfied.

6. Be that as it may, as I do not find any reason to interfere with the concurrent findings recorded by the Courts below and as no substantial question of law is involved in the present Appeal, the same is dismissed with no order as to costs.

7. In view of the dismissal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)