

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

**SECOND APPEAL NO.580 OF 2018
WITH
CIVIL APPLICATION NO.1346 OF 2018
IN
SECOND APPEAL NO.580 OF 2018**

M/s. Noori Construction Pvt. Ltd. ... Appellant
Versus
Bhavnaben Dilipbhai Patel ... Respondent

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Mr. Surel Shah a/w. Z.A. Jariwala a/w. Nitesh Menon I/b. Dua Associates for Appellant.

Mr. Saurabh Oka for Respondent.

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CORAM : M. S. KARNIK, J.

DATE : 24th JUNE, 2019.

P. C.:

1. Heard learned counsel for appellant and learned counsel for respondent.
2. The appellant is the original plaintiff. The plaintiff had filed a Suit for injunction based on possession. Learned counsel for the appellant has invited my attention to the facts on the basis of which the Courts below have proceed. The appellant as well as the respondent claim that they are in possession on the basis of various agreement of sale which have been executed by the owners of the suit property and/or their successor.

3. Insofar as the plaintiff is concerned, the claim is based on the agreement of sale dated 14.12.1990 (Exhibit 48). Learned counsel for the appellant relied upon these agreement of sale to contend that substantial consideration has been paid under the agreement. He would invite my attention to the admission of the defendant as regards complaint made by the husband of the defendant to the authority against M/s. Al Rehman on 22.06.1992 for unauthorised construction of two buildings up to the plinth level on the land S.32/1. Learned counsel would submit that factum of possession should have been decided in favour of the appellant having regard to the contents in the complaint. He assailed the reasoning of the Courts below in ignoring the said admission. He also relied upon Telephone bill to establish possession.

4. Per contra, learned counsel for the respondent invited my attention to the findings recorded by the Courts below. He would submit that based on the evidence on record the Trial Court as well as the First Appellate Court concurrently found that the appellant failed to establish possession.

5. I have gone through the findings recorded by the Courts below. As rightly held by the Courts below the agreements of sale at Exhibit 48 and 49 relied upon by the appellant do not disclose that the possession of the suit property has been handed over to the plaintiff. Even as regards the so called admission of the husband of the defendant that the complaint was made to the authority on 22.06.1992 about encroachment made by M/s. Al Rehman, the said complaint is not against the plaintiff and in fact the plaintiff is claiming to be in possession on the basis of agreement executed prior to the said complaint dated 30.04.1991 (Exhibit 49). Considering the oral and documentary evidence on record the Courts below have concurrently found that the plaintiff failed to establish their possession in the suit property.

6. The present appeal does not involve any substantial question of law.

7. I see no reason to interfere with the concurrent findings recorded by the Courts below. The Appeal is therefore dismissed.

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

(M. S. KARNIK, J.)