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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.869 OF 2016
WITH
CIVIL APPLICATION NO.1713 OF 2016

Ismail M. Shaikh	...Appellant
V/s.	
Malang A. Bagwan & Ors.	...Respondents

Mr.Ajay A. Joshi for the Appellant.
Mr.Surel S. Shah for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 20TH AUGUST, 2019.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the judgment and decree passed by the learned District Judge – 1 in Regular Civil Appeal No.12 of 2005 dismissing the appeal preferred by the appellant and upholding the judgment and decree passed by the lower Court on 1st March, 2005.

2. It was the case of the original plaintiff that the suit premises were given on leave and license to the appellant. The leave and license agreement was terminated by the plaintiffs on various grounds, including on the ground that the defendant had carried out unauthorized construction in the licenses premises. The suit was resisted by the defendant on various grounds including on the ground that the defendant was a tenant of the plaintiff and not the

licensee. The defendant had filed separate suit for declaration of his tenancy in respect of the suit premises. Learned trial Judge decreed the suit filed by the plaintiff and dismissed the suit filed by the defendant. The defendant did not file any appeal against the said judgment and decree dismissing his suit for declaration of tenancy.

3. Both the Courts below have rendered a finding of fact that the defendant was a licensee of the plaintiff and not the tenant. Be that as it may, the order passed by the learned trial Court rejecting the plea of the defendant that he was a tenant has attained finality.

4. The findings rendered by both the Courts below have been rendered after considering the oral and documentary evidence led by both the parties are not perverse. No question of law arises in this second appeal. The second appeal is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

5. In view of dismissal of the second appeal, Civil Application No.1713 of 2016 does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)