

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 561 OF 2018

ALONGWITH
CIVIL APPLICATION NO. 1297 OF 2018

Rasul Ahmed Inamdar	Appellant
V/s.	
Sundarabai Harishchandra	
Nagpurkar and Ors.	Respondents

* * * *

Mr. Niranjan P. Shimpi, Advocate for the appellant.

Mr. Suryajeet P. Chavan, Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 13th March, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. This Appeal is preferred by the defendant against the decree of possession passed in Regular Civil Appeal No. 370 of 2013.
3. I will refer the parties as per their status in the

suit.

4. The suit house property was allotted to the husband of the plaintiff as “project affected person”. Defendant no.1 had encroached over the SUI property and thus husband of the plaintiff had filed a suit being Regular Civil Suit No. 196 of 1984. The said suit was decreed on 8th November, 1989 and defendant no.1 herein was declared as a trespasser vide decree passed in Regular Civil Suit No. 196 of 1994. On 7th August, 1996, defendant no.1 executed agreement to sell in respect of the suit property in favour of defendant no.2, who is the appellant before this Court. On the backdrop of the aforesaid facts, the plaintiff filed suit for possession of the suit house property, after her husband's demise.

5. The trial Court dismissed the suit, however, decree was challenged in Regular Civil Appeal. The Appellate Court allowed the Appeal and passed the decree of possession and directed the defendant-appellant to handover possession of the suit house property to the plaintiff within two months.

6. Admittedly, the date on which defendant no.1 executed the agreement in favour of defendant no.2 i.e the appellant herein, the decree passed in Regular Civil Suit No. 196 of 1994 was in force whereby defendant no.1 was declared as trespasser and therefore such defendant no.1 had no right to execute the agreement to sell in favour of defendant no.2. Obviously, this agreement has not created any enforceable rights in favour of the defendant no.2.

7. Thus, the finding of fact rendered by the First Appellate Court is consistent with the evidence on record and it cannot be faulted with. The Appeal does not give rise to any substantial question of law. The Appeal is dismissed.

8. With dismissal of the appeal, Civil Application No. 1297 of 2018 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)