

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

**SECOND APPEAL (ST.) NO.32826 OF 2018
WITH
CIVIL APPLICATION (ST.) NO.36275 OF 2018
IN
SECOND APPEAL (ST.) NO.32826 OF 2018**

Hari Natha Bongarde ... Appellant
Versus
Ramchandra Ganapati Tambekar ... Respondent

.....
Mr. Chetan G. Patil for the Appellant.

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CORAM : M. S. KARNIK, J.

DATE : 23rd JULY, 2019.

P. C.:

1. Not on board. Taken on board.
2. Learned counsel for the appellant mentioned the matter at 11.00 a.m. and pointed out that the possession warrant has been issued and the same is to be executed today. It is in these circumstances the papers were called for.
3. I have heard learned counsel for the appellant on merits.

4. The respondent-original plaintiff filed a Suit for possession of the suit property against the appellant-original defendant of village Belewadi, Tq. Kagal, Dist. Kolhapur. The property is owned by the original plaintiff and other persons. The defendant is the real maternal uncle of the plaintiff and he had expressed his desire to open STD booth at Belewadi (Masa). It is the case of the plaintiff that the possession over the suit property by the defendant was permissive in nature.

5. Learned counsel for the appellant would invite my attention to the agreement of sale dated 31.5.1997 and submitted that the said agreement of sale was executed by accepting the amount of Rs.11,000/-. According to the defendant he became entitled to remain in possession and the suit deserves to be dismissed in view of the agreement of sale dated 31.5.1997. Learned counsel would invite my attention to the averments made in the plaint where the plaintiff had accepted that he had signed some of the documents.

6. The Courts below concurrently found that the possession of the appellant-original defendant to be permissive in nature. The plaintiff in his capacity as the owner of the suit property permitted the defendant to occupy the suit premises. In so far as the agreement of sale is concerned the Courts below considered the evidence on record. The counter claim was filed by the defendants almost four years after filing of the suit. The Courts below took into consideration the conduct on the part of the defendant in not filing the suit for specific performance of the agreement of sale and even in so far as the counter claim was concerned, the same was filed almost after four years from the date of filing the suit.

7. The Courts below have also appreciated the materials on record while considering the question whether the agreement of sale claimed to be executed by the plaintiff in favour of the defendant is really executed or not. The attesting witnesses to the agreement of sale are not examined. The defendant examined witnesses to show that the agreement of sale was executed in their presence. Considering the admission of these witnesses Courts

below came to a conclusion that these witnesses were not present when the document is alleged to be executed. The Courts below after considering the evidence on record arrived at the finding that defendant could not prove that agreement of sale dated 31.5.1997 was executed by accepting the amount of Rs.11,000/-.

8. I see no reason to interfere with the concurrent findings of fact recorded by the Courts below. The present Appeal does not involve any substantial question of law. The Second Appeal is dismissed.

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

10. Learned counsel for the appellant requests that the appellant be protected for a period of two weeks. Subject to the appellant filing an undertaking to this Court on or before 26.7.2019 undertaking that the appellant will vacate the suit premises within 2 weeks from today, the appellant not to be dispossessed till then.

(M. S. KARNIK, J.)