

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****SECOND APPEAL NO.299/2019**

Nirmalabai wd/o Kawduji Enchalwar and Ors. .vs. Vithal Bapurao
Enchalwar and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. M. P. Kariya, Advocate for appellants.
Mrs. S. Kulkarni, advocate for respondents.

CORAM : V. M. DESHPANDE, J.

DATED : JULY 23, 2019

Heard Mr.Kariya, learned counsel for appellants
and Mrs.Kulkarni, learned counsel for respondents.

Vitthal Bapurao Enchalwar filed a suit for possession i.e. Regular Civil Suit No. 52/2008 against his brother Kawadu. According to the plaintiff, the suit property i.e. residential house situated at Pandharkawda was a self acquired property of their father Bapurao, who sold the same by executing registered sale deed on 11.11.1975 in favour of the plaintiff. As per the case of the plaintiff, in 1976, as per the request of his brother, he permitted Kawadu to reside as his licensee. After retirement from service, plaintiff asked for vacant possession, which was denied and, therefore, he issued notice dated 25.02.2008 and demanded possession.

After being duly served with summons of the suit, defendant appeared and filed written statement. He denied ownership and possession of the plaintiff from 11.11.1975. According to the defendant, he was residing as owner since 1958. The trial Court decreed the suit holding that the

defendant was licensee. The defendant could not adduce any evidence on record to show his possession from 1958 till 1976 i.e. the date when he was inducted as licensee by the plaintiff. The suit was decreed and therefore the appeal was carried by Kawadu i.e. Regular Civil Appeal No.13/2009. However, during the pendency of the appeal, he expired and therefore his legal representatives i.e the present appellants were brought on record. The appellate Court also found that the claim of the defendant that he was in possession since 1958 is not proved. On the contrary, it was found that the defendant was inducted as licensee in the year 1976. Once license was initially terminated by the plaintiff/licensor and after termination of license, the defendant was found to be in possession, the decree of possession was passed.

No substantial question of law is involved in the present appeal. The appeal is therefore rejected.

JUDGE