

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

**SECOND APPEAL NO. 886 OF 2017
WITH
CIVIL APPLICATION NO. 1982 OF 2016
CIVIL APPLICATION NO. 709 OF 2019**

Smt. Shamim Banu Nafis Shaikh. ..Appellant.

v/s.

Shri Mahendra Bapurao Ankutkar. ..Respondent.

Mr. Suresh M. Sabrad, advocate for appellant.

Mr. Suresh Dubey, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 6, 2020.

P. C. :

1 The appellant herein impugns the Judgment and Order dated 17/7/2015 passed by the District Judge, Kalyan in Civil Appeal No. 74 of 2012, thereby dismissing the appeal of the appellant and confirming the Judgment and Order dated 30/9/2011 passed by Civil Judge, Senior Division, Kalyan in Special Civil Suit No. 290 of 2010. Substantial questions of law as framed by the appellant are as follows :

(a) Whether both the Courts below failed in appreciating the effect of two Agreements dated 2.11.2001 and 8.12.2001 on

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the transaction ?

(b) Whether both the Courts below failed to appreciate that the specific clause in the agreement dated 8.12.2001 that all the payment as agreed between the parties in Agreement dated 2.11.2001 is complete ?

(c) Whether both the Courts below ought not to have relied upon the earlier Agreement dated 2.11.2001 when the subsequent Agreement dated 8.12.2001 specifically stated earlier Agreement dated 2.11.2001 is thereby revoked ?

2 Perused both the agreements dated 2/11/2001 and 8/12/2001. In fact, subsequent agreement is only continuation of the earlier agreement and it indicates that an amount of Rs. 57,000/- have received by the title holder of the property(Plaintiff). However, the appellant has failed to substantiate the contention that the appellant has abided by the terms and conditions in the subsequent agreement. There is no material on record to even remotely indicate that the terms of the agreement were abided by and therefore, the courts below were right in holding that there has been a breach of the terms of the agreements and therefore, it cannot be said that the courts below have not considered the agreement.

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3 In fact, only after the appellant had committed breach of the terms of agreements, the plaintiff was constrained to file suit for eviction. The contention in the written statement are also contrary to the terms of agreement and there is no evidence to that effect. The plaintiff has failed to prove that the defendant was a trespasser on the said property. In fact, the appellant was put into possession of the suit property on the basis of the agreement executed between the parties and therefore, both the courts have rightly held that the appellant shall hand over vacant, peaceful possession of the said property in favour of the original plaintiff.

4 Court cannot be oblivious of the fact that the present Second Appeal is also accompanied by the Civil Application seeking a liberty of bringing on record subsequent agreement dated 7/5/2003 although the suit was filed on 9/7/2008. The application is filed under order 41 Rule 27 of the Code of Civil Procedure, 1908 seeking liberty of producing the said agreement on record. All contentions of the appellant are inherently contradictory to each other. The substantial questions of law as framed by the appellant is devoid of any merits and hence, Second Appeal stands dismissed.

5 At this stage, Learned Counsel for the appellant, in

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the presence of the appellant submits that the appellant alongwith his family members would file an undertaking to the effect that they would vacate the suit premises peacefully and hand over vacant and peaceful possession in favour of the respondent on or before 5th March, 2020. Upon failure, the respondent would be at liberty to seek police assistance.

6 In view of dismissal of the second appeal, nothing survives in the civil applications. The same are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]