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

**SECOND APPEAL NO.517 OF 2017
WITH
CIVIL APPLICATION NO.726 OF 2017**

Mr. A. Majid Shaikh Bashir	... Appellant
Versus	
Mrs. Afsana Bano Jakir Hussain	... Respondent

Mr. Bhushan Ulhas Deshmukh for the Applicant/Appellant.
Mr. Abdul Rashid Shaikh for the Respondent.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 20th JANUARY 2020.

PC.:

1 Heard. The appellant herein impugns the judgment and order dated 4th January 2017 passed by the District Judge, Malegaon in Civil Appeal No.142 of 2012 thereby setting aside the decree and judgment dated 15th April 2009 passed by the Civil Judge, Senior Division in Civil Suit No.34 of 2008. The substantial question of law as framed by the appellant are mainly on facts. However, the substantial question of law that needs to be decided is as to:

“(a) whether the suit was filed and tried wrongly before the Civil Judge, Senior Division, Malegaon;

(b) whether the Civil Judge, Senior Division, Malegaon had jurisdiction to try the said suit.”

2 The facts of the case are that the plaintiff had filed the suit for vacant and peaceful possession from the defendant on the ground that he was the purchaser of the suit property and had a title to the suit property on the basis of a registered sale deed dated 17th September 2001.

3 The defendants who happen to be the close relatives of the plaintiff filed their written statement contending therein :-

- (i) That they were in possession of the suit property since their ancestors. That the defendant had given a sum of Rs.2,20,000/- to the plaintiff in order to purchase the said property in the name of the defendant however, the plaintiff had purchased the suit property in her own name and was then seeking possession from the defendant;
- (ii) Secondly, the defendant was a tenant in the suit property and paying a monthly rent of Rs.100/- towards which no receipt was issued by the plaintiff;
- (iii) Thirdly, he is residing in the suit premises in the capacity of one of the owner/co-sharer and is in possession of the same since long. In the written statement, there was a specific plea that the relationship between the parties is that of a landlord and the tenant;
- (iv) That it was also contended that the plaintiff has not paid proper Court fee since the value of the suit property is about Rs.5 Lakhs or more.

4 Accordingly, the suit property was valued at Rs.5,60,000/-
for which the plaintiff paid stamp fee of Rs.15,630/-.

5 It was in these premises that the suit was transferred to the
Court of Civil Judge, Senior Division on 23rd January 2008, i.e.
practically four years after the institution of the said suit. Issue No.(b)
deserves to be answered in the affirmative.

6 The Court cannot be oblivious of the fact that it was on the
basis of the pleas raised in the written statement of the present appellant
that the suit was transferred to Civil Judge, Senior Division and now the
appellant cannot raise the issue that the Court of Civil Judge, Senior
Division have no jurisdiction to try the said suit. Hence, Issue No.1 needs to
be answered in the negative.

7 The trial Court had also recorded a negative finding on the
issue that the relationship between the plaintiff and the defendant is not of
a landlord and tenant. The defendant had raised several defenses and at
this stage, it is also submitted that he becomes the owner by way of adverse
possession. It is more than clear that the defendant is not sure of his status
in respect of being in possession of the suit properties. It is not clarified as

to whether he is the owner by virtue of being co-sharer, whether he is the tenant, whether he is the licensee, or whether he is entitled to be an owner by virtue of adverse possession. In view of the above discussions, the second appeal being sans merit deserves to be dismissed and hence, is dismissed. Needless to say that the interim relief granted by this Court vide order dated 20th June 2017 stands vacated.

8 At this stage, the learned counsel for the respondent seeks stay to the present order. The decree is of the year 2017 and the Suit is of the year 2008. Hence, there is no reason to stay the present order. Second Appeal is dismissed. Prayer is accordingly rejected. Civil application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)