

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

**CIVIL APPLICATION NO.2038 OF 2017
IN
FIRST APPEAL NO.1625 OF 2013**

Sundip Ranjit Atit .. Applicant/Appellant
Vs.

Pravin Moreswar Desai (since deceased)
through his legal heirs

1A. Lata Sudhir Desai & Ors. .. Respondents

Mr.S.P. Dalal i/by M/s.Dalal & Co. for the applicant/appellant.
Ms.Sharmila U.Deshmukh for the respondent nos.1A and 1B.

CORAM : R.D.DHANUKA, J.
DATE : 22nd January 2020

P.C.:

. By this civil application, the applicant seeks to transpose the respondent no.3 as the appellant no.2 in the first appeal. Application is opposed by the learned counsel for the respondent nos.1A and 1B.

2. It is not in dispute that the respondent no.3 claims to be the owner of the suit property. The suit was filed for declaration that the original defendant no.1 was the trespasser and was in unlawful occupation of the suit premises. The respondent no.3 did not file any separate suit for seeking such declaration or any other reliefs against the original defendant no.1. It is not in dispute that the original defendant no.1 filed a separate suit for a declaration against the landlord in respect of the suit premises before the Small Causes Court.

3. In my view, the respondent no.3 thus cannot be transposed as the appellant no.2 in the first appeal filed by the appellant. It is for the respondent no.3 to decide whether he wants to file any independent proceedings against the defendant no.1 or not.

4. Civil application is misconceived and is accordingly dismissed. No order as to costs.

R.D.DHANUKA, J.