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

**SECOND APPEAL NO.862 OF 2017
WITH
CIVIL APPLICATION NO.1526 OF 2017**

Ramshankar Bhalchandra Wagal	... Appellant/ Applicant
Versus	
Sadanand Vitthal Umare	... Respondents

Mr. Kuldeep S. Patil for the Applicant/Appellant.
Mr. Nandakumar Ganpat Korekar for the Respondents.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 10th JANUARY 2020.

PC.:

1 The appellant herein impugns the judgment and order dated 2nd March 2017 passed by the District Judge, Alibaug in First Appeal No.58 of 2012 thereby setting aside the judgment and order dated 31st January 2012 passed by the Civil Judge, Junior Division, Alibaug thereby dismissing the Regular Civil Suit No.107 of 2009.

2 The substantial question of law which requires consideration in the present case is :-

- “(i) Whether the plaintiff had title on the basis of a gift deed which was not proved in accordance with law as per the requirements of section 123 of the Transfer of Property Act;
- (ii) Whether the admissions given in the cross-examination by the present appellant could be considered under section 58 of the

Indian Evidence Act for the purpose of deciding the title of the property which is the suit property in the present case.”

3 That the plaintiff was minor at the time of giving purported gift deed and therefore, his parents were guardian of the suit property. That according to the plaintiff upon attaining majority he had become the absolute owner of the suit property although he had two sisters one of whom was the mother of the present appellant. That according to the plaintiff, the appellant was in permissive possession of the suit property since the year 1979. Mutation entries were taken on the basis of the gift deed however, subsequently they were cancelled and the said cancellation is not challenged.

4 The facts of the case would show that one Mr. Paithankar had gifted the suit property in favour of the original plaintiff who happens to be the maternal uncle of the present appellant.

5 According to the plaintiff, the defendant was orally gifted half portion of the suit property by his grandmother. It is also contended that his parents were permitted to reside there by his grandmother and that he is residing there thereafter.

6 That the possession of the parents of the appellant has not been proved. Similarly, the gift deed upon which the plaintiff has relied has

also not been proved and the same is held by both the Courts below that the plaintiff has failed to prove that the property had devolved upon him by virtue of the gift deed purportedly executed by one Mr. Paithankar who was not related to either of the parties. In any case, the appellate Court has relied upon the admissions given by the appellant in his cross-examination that the house property was reconstructed by the plaintiff and that it is reconstructed in the year 1984. That Paithankar had gifted the property in favour of the plaintiff and that he has a share in the said property however, he is entitled to have the share only in the southern side of the house property and therefore, the appellate Court has held that the facts admitted need not be proved. Section 58 of the Indian Evidence Act, 1872 reads as follows :

“58. Facts admitted need not be proved

No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

7 It is not the contention of the appellant that he had vacated the house temporarily in the year 1984 so as to enable the plaintiff to reconstruct the said house and that the question remains as to whether the appellant was in possession of the suit property prior to 1984. The

written statement filed by the appellant does not give specific dates about the demise of his parents and therefore, it cannot be said that for past more than 30 years, the appellant is in continuous and peaceful possession of the suit property.

8 A notice was issued to the appellant under section 106(3) of the Transfer of Property Act, 1882 to which the appellant had not filed any reply. In view of this, it cannot be said that the appellant was in continuous peaceful possession of the Northern portion of the house by virtue of any oral gift deed executed by his grandmother. No witness has been examined by the defendant to prove his continuous possession in the suit property prior to 1984 or to show that he was in continuous possession of the suit property either before or after 1984.

9 In view of this, the finding recorded by the learned Appellate Court to the effect that by virtue of section 58 of the Indian Evidence Act, the facts admitted need not be proved holds a good ground. In view of the same, no interference is called for in the judgment of the first appellate Court. Appeal stands dismissed accordingly. No orders in Civil Application.

(SMT. SADHANA S. JADHAV, J.)