

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 SECOND APPEAL NO.362 OF 2021

SAMBHAJI MURLIDHAR BADGUJAR AND OTHERS
VERSUS
DHARMENDRA MADHUKARRAO SANDANSHIWE

...
Advocate for Appellants : Mr. Brahme Shailesh P.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27.08.2021

ORDER :-

. Present second appeal has been filed by original defendants to challenge the concurrent judgment and findings. Present respondent – original plaintiff filed Regular Civil Suit No.248 of 2012 for possession and compensation. The said suit was decreed by learned Joint Civil Judge Senior Division, Dhule on 28.03.2014. The said judgment and decree was challenged by the present appellant before the learned District Court, Dhule by filing Regular Civil Appeal No.49 of 2014. It came to be partly allowed by learned District Judge-3, Dhule on 18.12.2019. The first Appellate Court has decreed the suit partly by modifying the said decree and directed the defendants i.e. present appellants to hand over the vacant and peaceful possession of suit shop

to the plaintiff. Further, a separate inquiry has been ordered for mesne profits. The prayer for mandatory injunction directing the defendants to restore the eastern wall in the suit shop and to remove the iron grill as well as to pay damages to the tune of Rs.3,00,000/- has been rejected. The appellants intend to challenge those judgment and decrees.

2. Heard learned Advocate Mr. S. P. Bramhe for appellants. In view of the decision in *Ashok Rangnath Magar Vs. Shrikant Govindrao Sangvikar*, [(2015) 16 SCC 763], it is not even necessary to issue notice to the respondent at this stage. The question of calling upon the respondent to take part in the second appeal would arise only when the substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are pointed out by the appellants.

3. Taking into consideration the evidence that is adduced by the plaintiff, both the Courts have held that the plaintiff is the owner of the property and in fact, it is not in dispute as such. It is also not in dispute that the defendant is currently possessing the suit shop, which is block No.14 in Gurudatta Shop Centre. According to the plaintiff, he had inducted the defendant as gratuitous licensee, but then the defendant had taken defence that there was oral agreement to sell. In order to prove the said oral agreement, it appears that the defendant has

examined three witnesses, however, they have been disbelieved. The fact has also been noted that the defendant had purchased four shops in the same complex by executing sale deed and then why he could have not got the sale deed executed was the question raised. Further, it appears that in the written statement, defendants – appellants had not prayed for specific performance of the contract. On the evidence that has been assessed and it can be said that there is a detailed and correct assessment of the evidence, it has been held that the defendant is gratuitous licensee. There was no question of limitation since the plaintiff had proved that the possession of defendants was permissive in nature and it would come to an end only when the permission is withdrawn and, therefore, no substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case requiring admission of the second appeal. Second appeal, therefore, stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm