

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 SECOND APPEAL NO.172 OF 2019
WITH CA/3915/2019 IN SA/172/2019

THOIDE PRATAPCHAND BHAMBAL
VERSUS
RAJESH @ GANANAN NISHIKANT DANDNAIK

...
Advocate for Appellants : Mr. Gawali Amol K.
Advocate for the respondent : Mr. S.P. Salgare h/f. Mr. N.V. Gaware
...

CORAM : MANGESH S. PATIL, J.

DATE : 06 APRIL 2022

PC :

Heard both the sides.

2. The respondent is the original plaintiff who styled his suit as one under the Transfer of Property Act and prayed for possession of the demised premises.

3. Though there was a vague objection raised in the written statement paragraph no.11 that the suit could not have been filed under that Act, no specific issue was framed by the trial court and the suit was decreed without making any reference to any provision of the Maharashtra Rent Control Act, 1999.

4. The lower appellate court upheld the objection raised on behalf of the appellant that the suit ought to have been filed under the Maharashtra Rent Control Act, 1999. In spite of recording a finding to this effect, it examined the correctness of the judgment and decree of

the trial court applying the provisions of the Maharashtra Rent Control Act while confirming the decree.

5. The second appeal is admitted on the following substantial questions of law :

- I) Whether the suit was maintainable under the Transfer of Property Act ?
- II) Whether once having concluded that the suit was not maintainable under the Transfer of Property Act and ought to have been filed under the Maharashtra Rent Control Act, 1999, the lower appellate court was justified in deciding the appeal preferred under section 96 of the Code of Civil Procedure by applying the provisions of the Maharashtra Rent Control Act and confirming the decree passed by the trial court ?
- III) Whether the lower appellate court was in error in not recognizing the right of the appellant to dispute the derivative title of the respondent which he was claiming on the basis of a will and not insisting for its strict proof ?

6. Considering the nature of the dispute, the execution of the decree shall stand stayed till the final disposal of the second appeal.

7. Civil application no. 3915 of 2019 stands disposed of.

[MANGESH S. PATIL]
JUDGE

arp/