

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

**SECOND APPEAL NO. 130 OF 2022
WITH
INTERIM APPLICATION NO. 875 OF 2022
IN
SECOND APPEAL NO. 130 OF 2022**

Anandrao Krishna Salunkhe Appellant
v/s.
Bajarang Krishna Salunkhe and ors. Respondents

Mr. Kishor Patil a/w. Mr. Amar Gharte for the Appellant.
Mr. Drupad Patil a/w. Mr. Dheeraj D. Patil for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th MARCH, 2022.

P. C. :-

. The Appellant who is the original defendant in the suit has filed this Appeal challenging the judgment dated 08/01/2021 whereby the learned District Judge-1, Ichalkaranji has dismissed the Appeal and thereby confirmed the judgment dated 27/07/2017 passed by the 5th Joint Civil Judge, Junior Division, Ichalkaranji in favour of Respondents-plaintiffs.

2. The dispute between the parties is in respect of three floor

building having house no.249, surveyed under CTS No.9292A of Village Ichalkaranji. The said building shall be hereinafter referred to as 'the suit premises'. It is the case of the Respondent – Plaintiff that the suit building was constructed by his father in his self acquired property surveyed under CTS No.9292A. The Respondents claimed that his father Krushna has gifted the said property and the suit premises to the Respondents by three separate gift deeds. It is stated that the Appellant was permitted to reside on the ground floor of the suit premises. He is merely a gratuitous licensee whose license was terminated by issuing notice dated 31/08/2007. Since the Appellant failed to vacate the premises, the Respondent filed the suit for possession and for permanent injunction.

3. The Appellant resisted the suit on the ground that the property was purchased by Krushna from the joint family income. The Appellant further claimed that the gift deeds executed by Krushna in favour of the Respondents were sham and bogus and not binding on him and filed the counter claim for cancellation of the gift deeds.

4. The Trial Court, upon appreciating the evidence adduced by the respective parties, recorded a finding that the suit premises were

constructed by Krushna, the father of the Appellant and Respondent in the property purchased by him by sale deed dated 08/02/1952. The Trial Court observed that the Appellant and the Respondents were minors as on the date of purchase of the suit premises. The Trial Court also observed that the Respondent had not raised a defence that Krushna and his brothers had joint family business and the property was purchased from joint family income. The Trial Court, therefore, held that the property in controversy was a self acquired property which has been gifted to the Respondent herein. The Trial Court also held that Krushna had allowed the Appellant to reside in the suit premises and as such, the possession of the Appellant was not unauthorized. The Trial Court therefore held that the Respondents are not entitled for mesne profits. On the basis of the said findings, the Trial Court dismissed the counter claim and partly decreed the suit by granting the prayer for possession and rejecting the prayer for mesne profits.

5. The Appellate Court confirmed the findings that the suit property was self acquired property of Krushna and that he has gifted the same to the Respondents-plaintiffs. The Appellate Court has also held that the Appellant has failed to prove that the gift deed is sham and

fabricated. The Appellate Court therefore, dismissed the Appeal and directed the Appellant to handover the possession of the suit premises within two months i.e., on or before 09/03/2021. The Appellate Court further held that the Respondents-plaintiffs would be entitled for mesne profits with effect from 10/03/2021 if the Appellant fails to handover the vacant possession of the suit premises.

6. The challenge to the judgment is mainly on the ground that the suit property and the structure was purchased from joint family income and the same could not have been gifted exclusively to the Respondent. It is further stated that the gift deeds executed by Krushna in favour of the Appellant are sham and fabricated. The Appellant has also stated that in the absence of any cross Appeal or cross objection, the Appellate Court was not justified in awarding mesne profits.

7. Mr. Kishor Patil, learned counsel for the Appellant submits that the property was purchased from the joint family income and as such said Krushna could not have bequeathed the property in favour of the Respondents. He submits that the findings of the Trial Court as well as the Appellate Court that the property is self acquired property, is not based on the evidence on record. He fairly concedes that the

Appellant has not adduced any evidence to prove their contention that the gift deeds executed by Krushna are fabricated and sham. Learned counsel for the Appellant states that in the absence of cross appeal or cross objection, the Appellate Court could not have awarded any mesne profit.

8. Mr. Drupad Patil, learned counsel for the Respondents states that the Respondents shall not claim mesne profits and that the order to that extent can be modified. Statement is accepted. He further submits that there is absolutely no evidence on record to prove that the property was a joint property and that the findings of the Trial Court and the Appellate Court that the subject property is a self acquired property are based on the evidence on record. He submits that the Appeal does not involve any substantial question of law and hence, needs to be dismissed.

9. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

10. It is not in dispute that the property was purchased by Krushna, the father of the Appellant and the Respondent and that he had

constructed the suit building in the said property. It is also not in dispute that the Appellant and the Respondents were minors as on the date of purchase. It is also not the case of the Appellant that Krushna and his brothers or other family members had a joint business and that the property was acquired with the aid of the nucleus of the joint family property. As conceded by the learned counsel for the Appellant, there is no evidence to prove that the gift deeds are sham or bogus. The Respondents are therefore the owners of the property and the Appellant was only permitted to reside in the suit property. Being the gratuitous licensees, the Appellant is required to vacate the premises on termination of the license.

11. Having considered the entire evidence on record, in my considered view, the findings recorded by the Trial Court as well as the Appellate court that the subject property is a self acquired property, are based on the evidence on record and are not perverse and hence, does not warrant interference. The Appeal does not involve substantial question of law and is liable to be dismissed except for the relief in respect of the mesne profits from 10.03.2021 till the date of handing over of the possession, which stands rejected. Decree to that effect stands modified. Appeal stands disposed of in above terms.

Civil/Interim Applications, if any, stand disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)

**PREETI
H JAYANI**

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