

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

SECOND APPEAL NO. 185 OF 2022
WITH
INTERIM APPLICATION NO. 1299 OF 2022
WITH
INTERIM APPLICATION NO.1298 OF 2022

Amir Hamja Dastgir Patwegar ..Appellant

v/s.

Rahimtullaha Dastgir Patwegar ..Respondents

Mr. Amol Patil i/b. Mr. Sachin Hande for the Appellant

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 7th MARCH, 2022.**

P.C.

1. With consent of the parties, heard finally.
2. The Appellant herein, who is the Defendant in the suit has challenged the judgment dated 31.3.2021, whereby the First Appellate Court allowed the Regular Civil Appeal No.26 of 2014 and thereby confirmed the judgment and decree dated 24.1.2014 passed by the trial Court in Regular Civil Suit No.184 of 2010.
3. Heard learned Counsel for the Appellant. I have perused the records.

4. The Respondent herein was the Plaintiff in the suit. He claims that they had obtained lease hold rights in respect of the property at Plot No.152 from Netaji Subhash Chandra Bose Bhadekaru Malki Hakka Graha Nirman Sanstha Maryadit, Miraj and he had constructed two rooms in the said plot and allowed the Defendants to reside in the said rooms on temporary basis. Since the Appellants herein required the said premises for his own use and since the Respondents refused to vacate the same, he filed a suit for possession.

5. The Appellants denied that the Plaintiff had acquired lease hold rights in respect of the suit plot. He claimed that their ancestors had taken the property on rent, and that he was permitted to reside in the said property till the ancestral properties were partitioned.

6. The trial Court, upon relying on the documents at Exhibit 46 and 47, held that the Respondent had proved that the subject suit plot was allotted to him by Netaji Subhash Chandra Bose Bhadekaru Malki Hakka Graha Nirman Sanstha Maryadit, Miraj on 19.7.1995 for a period of 99 years. The learned Judge also held that the Plaintiff has proved that he had constructed two rooms in

the said plot and since the ancestral house was not sufficient to accommodate all the brothers, he had allowed the Appellant to reside in the two rooms. The Appellant had agreed to vacate the said rooms whenever the Plaintiff required the same for his own use. These findings are confirmed by the first Appellate Court.

7. The records indicate that though the Defendant had taken a specific plea that their ancestors had taken the property on lease and that the two rooms were given to him permanently, the Defendant had not stepped into the witness box to prove the defence raised by the Appellant. It was under these circumstances that the trial Court and the Appellate Court has held that the Defendant has failed to prove that the said rooms are part of ancestral property. The findings recorded by both the Courts are based on evidence on record and cannot be termed to be perverse. No substantial question of law is involved requiring interference in exercise of jurisdiction under Section 100 CPC. Moreover, learned Counsel for the Appellant states that the execution filed by the Appellant, possession of the said rooms is already handed over to the Respondent-plaintiff. Under the circumstances, the Appeal is dismissed.

8. Interim Application is dismissed in view of dismissal of the Appeal.

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(ANUJA PRABHUDESSAI, J.)