

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

**SECOND APPEAL NO.602 OF 2022
WITH
INTERIM APPLICATION NO.807 F 2019**

Shri. Krishna Vithu Patil
through Power of Attorney Holder

Shri. Ramesh Krishna Patil

...Appellant

Versus

Shri. Shahu Shikshan Prasarak Mandal
Kolhapur through President Dattatraya Ganpat
@ Sakharambapu Kharade (Abated) & Ors.

...Respondents

Mr. Drupad S. Patil for the Appellant/Applicant.

Mr. Sandeep Koregave, for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 7th DECEMBER 2022**

P.C. :

1. Heard Mr. Drupad Patil, learned counsel appearing for the Appellant and Mr. Sandeep Koregave, learned counsel appearing for the Respondents.

2. Mr. Drupad Patil, learned counsel appearing for the Appellant submitted that the Respondents have filed suit for

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recovery of possession of the suit house admeasuring 52X22 sq. mtrs. out of total area of 3190.75 sq.mtrs. of C.T.S. No.1363 situated in A Ward in Kolhapur city. According to him, substantial question involved in the Second Appeal is that the Plaintiffs i.e. Respondents have failed to prove the ownership of said portion of 52X22 sq. mtrs. According to him, Respondent No.1 purchased land bearing CTS No.1363/B from Kolhapur Municipal Corporation for the purpose of starting the Educational Institute and the said portion occupied by the Appellant is not part of the said transaction executed by Kolhapur Municipal Corporation in favour of Respondent No.1. However, perusal of the judgment of the learned Trial Court and judgment of the learned Appellate Court clearly show that after appreciating the evidence on record both the Courts have concurrently held that Respondent No.1 is the owner of suit property. The Courts below apart from the evidence on record have relied on extensive cross- examination of witness of the Appellant. The relevant discussions of the learned Trial Court are found from paragraphs 21 to 25. Paragraphs 22 and 25 read as follows:

22. DW 2 in his evidence tried to suggest that originally CS Nos. 1363 and 1364 were owned by his family and he disputed the ownership of the plaintiff Society on the suit property. **But in his cross examination he admitted that CS Nos. 1363 and 1364 are in possession of the plaintiff Society. He further admitted the defendant was allowed to live in suit property during he was in service of the plaintiff Society.**

25. The defendant's power of attorney Ramesh himself admitted that the plaintiff Society was not taken rent in respect of the suit property from his father. **There was no owner and tenant relationship between the plaintiff society and his father. His father was started to reside in the suit property since from 1959. In view of oral and documentary evidence of the plaintiff, I have no hesitation to record that defendant was licensee without consideration in the suit property. The defendant is retired from the service of the society. Hence he is under obligation to hand over vacant possession of the suit property to the plaintiff society. Therefore, I have recorded my findings in affirmative on these issues."**

(Emphasis added)

3. The finding regarding ownership of the Respondent No.1 is confirmed by the learned Appellate Court by giving reasons in paragraph 14.

4. Thus, there is no substance in the substantial question of law raised by the Appellant. There is concurrent finding

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recorded that Respondent No.1 is the owner of the suit property and the Appellant was gratuitous licensee, hence no interference is required and the Second Appeal is dismissed, however, with no order as to costs.

5. In view of the dismissal of the Second Appeal, nothing survives in the Interim Application and same is disposed of as such.

[MADHAV J. JAMDAR, J.]

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