

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO. 99 OF 2022

Laxman s/o Bhika Paighan vs. Shankarrao Pandurang Paighan and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. D. S. Khushlani, Advocate for appellant.

CORAM : MANISH PITALE J.

DATE : 22/03/2022

By this appeal, the appellant is challenging concurrent judgments and orders passed by the two Courts below, whereby a decree for recovery of possession has been passed in favour of the respondents(original plaintiffs).

2. The respondents filed the aforesaid suit for recovery of possession on the basis that they were the absolute owners of the suit property after the demise of their Predecessor i.e. their father. It was claimed that the appellant was allowed to reside in the suit property i.e. accommodation in question till Diwali Festival of the year 2006 by the Predecessor of the respondents. He was supposed to handover vacant possession of the property after the Diwali Festival in the year 2006. It appears that the

appellant continued in the suit property. The father of the respondents did issue notice on 12/12/2006 to the appellant to handover vacant possession, but the appellant refused to do so and continued in possession. Thereafter, the father of the respondents expired and it was in the year 2012 that the respondent filed the suit for recovery of possession. The appellant principally raised defence that the property in question was joint family property and that the respondents were not the absolute owners, thereby claiming that the suit for recovery of possession could not have been filed by the respondents. In the backdrop of such defence taken by the appellant, the trial Court framed issues on the question as to whether the respondents were the absolute owners of the suit property and whether the respondents proved that the appellant had continued illegally in possession of the suit property and that he was a trespasser. After appreciating oral and documentary evidence on record, the suit was decreed in favour the respondents herein. Aggrieved by the same, the appellant filed first appeal before the District Court. The appeal was also dismissed. The present appeal has been filed challenging the concurrent orders passed by the two Courts below.

3. Mr.Khushlani, learned counsel appearing for the appellant contended that when the father of the respondents had failed to file any proceedings in pursuance of the notice issued in the year 2006, the respondents were not entitled to maintain the suit in the year 2012 for recovery of possession. It was submitted that in the absence of issuance of any notice to the appellant, the respondents could not have directly proceeded to file the suit for recovery of possession.

4. A perusal of the impugned judgments and orders passed by the two Courts below would show that although submission in this regard appears to have been made for the first time before the appellate Court, the nature of defence raised on behalf of the appellant before the Court below was concerned more particularly with the question as to whether the respondents could be said to be absolute owners of the suit property.

5. Even otherwise, the case of the respondents was that the appellant was illegally in possession of the suit property and that he was a trespasser. It is on the basis of such pleadings of the parties that oral and documentary evidence was led

and the Courts below decided the issues that arose for consideration.

6. This Court is of the opinion that the principal contention sought to be raised in this appeal was not canvassed before the two Courts below. Even otherwise, the learned counsel for the appellant was unable to demonstrate as to what prejudice was caused to the appellant even if the respondents directly filed the suit for recovery of possession before the trial Court. It was the specific case of the respondents that the appellant was a rank trespasser and that being absolute owners of the suit property, they were entitled to recovery of possession thereof.

7. In view of the above, this Court is unable to agree with the learned counsel for the appellant that any substantial question of law arises in the present appeal. No error can be attributed to the findings rendered by the two Courts below and therefore, the appeal is found to be without any merit. Accordingly, it is dismissed.

JUDGE