

VRJ

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

SECOND APPEAL NO.566 OF 2022

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
JADHAV
Date: 2023.11.29
10:33:53 +0530

Anil Laxman Kadam Since Deceased
Through His Heirs and Legal
Representatives Adesh Anil Kadam &
Ors. ... Appellants

V/s.

Ganpat Chima Bhosale Since Deceased
Through His Heirs and Legal
Representatives Arun Ganpat Bhosale &
Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.17076 OF 2022
IN
SECOND APPEAL NO.566 OF 2022**

Anil Laxman Kadam Since Deceased
Through His Heirs and Legal
Representatives Adesh Anil Kadam &
Ors. ... Applicants

V/s.

Ganpat Chima Bhosale Since Deceased
Through His Heirs and Legal
Representatives Arun Ganpat Bhosale &
Ors. ... Respondents

Mr. Mohan N Dhamal for the appellant/applicants.

Mr. Pradip S. Gole for respondent Nos.1A, 1C, 3 and 4.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2023

P.C.:

1. The appeal is by the defendants against whom Courts below have passed decree for possession in a suit for possession based on title filed by the plaintiffs.
2. The respondents are the original plaintiffs filed Regular Civil Suit No.11 of 2004 seeking possession of suit property based on title. According to the plaintiffs, their predecessor purchased the suit property and became owner of the suit property. According to the plaintiffs, the defendants are in possession of suit property on monthly rent of Rs.35/- and since the defendants failed to pay the amount of rent they issued notice on 15th May 2003 terminating defendants' tenancy and filed suit for possession.
3. The defendants contested the suit by filing written statement and contended that they are yearly tenant in the suit property. In absence of six months' notice to determine tenancy, the suit is not maintainable. According to them, the suit property used for manufacturing purpose (floor mill).
4. The Trial Court based on the pleadings framed issue of title casting burden on the plaintiffs to prove ownership of suit property. The Trial Court also framed the issue of valid termination of tenancy.
5. The Courts below based on admission of the defendants that plaintiffs are the owners of the suit property recorded a finding of fact that the plaintiffs have proved title over the suit property. Once the plaintiffs prove their title over the suit property, it is for the defendants to prove that the defendants are either statutorily

or contractually entitled to continue with the possession of suit premises. In the facts of the present case, the suit premises is not governed by the Maharashtra Rent Control Act, 1999. There is no other contract which entitle the defendants to continue with the possession of suit premises. Therefore, once the Courts below record a finding that the plaintiffs are the owners of the suit property, the defendants need to deliver possession of suit property. In so far as the contention regarding valid termination of notice is concerned, the Courts below have recorded a finding that in absence of registered document creating yearly tenancy, the defendants are not entitled to claim lease for a period of year or more. Therefore, in my opinion, the decree for possession based on title cannot be faulted. There is no substantial question of law involved.

6. The second appeal is, therefore, dismissed. No costs.

7. In view of the dismissal of the second appeal, the interim application does not survive and the same stands disposed of.

(AMIT BORKAR, J.)