

SA Pathan

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

SECOND APPEAL NO.563 OF 2023

**WITH
INTERIM APPLICATION NO.15627 OF 2023
IN
SECOND APPEAL NO.563 OF 2023**

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Sunil Ghanshyamdas Khandelwal & Anr ... Appellants

V/s.

Praful Niranjanaaji Khandelwal & Anr ... Respondents

Mr. J. A. Udaypuri i/by Mr. Jayprakash Dhanuka, for
Appellant/Applicant.

Mr. Sanjay Kumar Dubey, for Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2023

PC.:

1. The appellants are original defendants against whom the plaintiffs/respondents filed suit for possession. The plaintiffs filed a suit based on sale deed dated 8 October 1992. According to the petitioners, defendants status being appellants is that of trespassers and, therefore, the appellants are entitled to possession of the suit property based on title.

2. The appellants appeared in the suit through Advocate; however, did not file their written statement.

3. The Trial Court on 3 November 2015 passed an order of no written statement.
4. The plaintiffs adduced documentary evidence in support of their case. The defendants did not cross-examine the plaintiffs with the result, the evidence adduced by the plaintiffs remain unchallenged.
5. The Courts below based on agreement of sale dated 8 October 1992, the share certificate issued by the Cooperative Housing Society in respect of situated premises and recorded a finding that the plaintiffs are the owner of the suit premises.
6. Once, the Courts below record a finding of ownership of the suit property and possession of the suit property based on title, it is for the defendant to prove his right to remain in possession of the suit property. In absence of written statement or cross-examination of the plaintiffs, there is no statutory or contractual right protecting defendant's possession over the suit property. Therefore, the Courts below were justified in directing delivery of possession of the suit premises.
7. There is no substantial question of law involved in the appeal. The second appeal is dismissed. No costs.
8. In view of dismissal of second appeal, the interim application does not survive; hence, the interim application is disposed of.

(AMIT BORKAR, J.)