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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 434 OF 2020
WITH
CIVIL APPLICATION NO. 1644 OF 2017**

Ajmin Popat Pathan and Others ... Appellants

Vs.

Jainuddin Rafiuddin Kazi ... Respondent

Mr. I. M. Khairdi for the Appellants.

**CORAM : GAURI GODSE, J.
DATE : 11th SEPTEMBER 2024**

ORDER :

1. This Second Appeal is preferred by the original defendants to challenge the concurrent judgments and decrees directing the defendants to hand over vacant possession of the property described in paragraph 1B of the plaint.

2. Learned counsel for the appellants submits that the suit was initially filed for an open land, i.e. property described in paragraph 1B and for two rooms described in paragraph 1A of the plaint. He submits that during the pendency of the suit, an area of constructed rooms was acquired by the government. Hence, the plaintiff relinquished his claim so far as property 1A is concerned.

3. Learned counsel for the appellants submits that the finding recorded by the trial court based on the cadestral surveyor's map at Exhibit 168 indicates that there was no portion belonging to the plaintiff in existence. He relied upon the trial court's observations in paragraph 13 of the judgment. Learned counsel for the appellants thus submits that after the land belonging to the plaintiff was acquired, there was no property in existence that belonged to the plaintiff. He thus submits that the occupation of the appellants on the land bearing Gat No. 644 at the most would mean that the portion in occupation of the appellants belonged to the government.

4. Learned counsel for the appellants thus submits that both the courts have failed to consider the aspect of any area belonging to the plaintiff being actually in existence, entitling him to seek a decree for possession. He thus submits that the Second Appeal would require consideration on the aforesaid point to be decided on the plaintiff's entitlement to seek a decree for possession after the government acquired his land.

5. To consider the submissions made on behalf of the appellants, I have perused the impugned judgments. The suit was initially filed for

possession of the constructed part described in the plaint in paragraph 1A and the open area occupied by the defendants, described in paragraph 1B. There appears to be no dispute with regard to the property described in paragraph 1A, as the plaintiff has relinquished his claim in the said prayer. The trial court has considered the document of title produced by the plaintiff in support of his claim of exclusive ownership. The cadastral surveyor's map at Exhibit 168 is examined by the trial court.

6. In paragraph 13 of the impugned judgment the trial court has referred to the cadastral surveyor's map and recorded a finding that the portion purchased by the plaintiff, i.e. 10x40, i.e. the property described in paragraph 1B, is seen to have been occupied by the defendants. The trial court further recorded that the plaintiff was not found in possession of the said area. Thus, by relying upon the document of title produced by the plaintiff, the trial court accepted the plaintiff's title on the property in paragraph 1B. The defendants admittedly failed to produce any document of the source of title or any source of the right to occupy property 1B. Thus, by accepting the plaintiff's title over the said property, the trial court decreed the suit for

the plaintiff's entitlement to get the vacant possession of the suit property in paragraph 1B.

7. The First Appellate Court also, after examining the pleadings and evidence on record, confirmed the finding recorded by the trial court. The sale deed produced on record in favour of the plaintiff is not in dispute. The defendants have not disputed the plaintiff's title based on the document of registered sale deed. Thus, in the absence of the defendant's right to retain possession of the property owned by the plaintiff, the reasons recorded by both courts cannot be faulted.

8. I do not see any infirmity or perversity in the reasons recorded by both courts. The decree for possession is based on concurrent findings of facts regarding the plaintiff's title.

9. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

10. In view of the dismissal of the Second Appeal, pending Civil Application No. 1644 of 2017 is dismissed as infructuous.

[GAURI GODSE, J.]