

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

WRIT PETITION NO.13578 OF 2024

Tasavoor Abdul Khalik Siddiqui

....Petitioner

V/S

Oan Miyajiwala & Ors.

....Respondents

Mr. S.C. Wakankar with Ms. Aishwarya Bapat *for the Petitioner.*

CORAM: SANDEEP V. MARNE, J.

DATE : 30 SEPTEMBER 2024.

P.C.:

1. The Petition challenges judgment and order dated 1 August 2024 passed by the Principal District Judge, Pune, dismissing the Civil Appeal No.222 of 2010 and confirming the decree dated 12 November 2009 passed by Judge, Small Causes Court, Pune, in declaratory suit bearing Civil Suit No.545 of 2004 filed by the Petitioner/Plaintiff.

2. I have heard Mr. Wakankar, the learned counsel appearing for the Petitioner.

3. Petitioner's father was admittedly the tenant in respect of the suit premises. Plaintiff claims that by deed of assignment dated 27 March 2000 he purchased the business of his father alongwith goodwill and stock in trade and

that in accordance with the notification issued by the State Government under provisions of section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, execution of such deed of assignment would make Petitioner the tenant in respect of the suit premises. Petitioner accordingly filed declaratory suit being Civil Suit No.545 of 2004 for a declaration that he is the tenant in respect of the suit premises. Petitioner's father was impleaded as Defendant No.5 in the said suit, who did not support the Plaintiff and denied execution of assignment deed dated 27 March 2000.

4. It appears that the landlords filed a separate suit seeking eviction of Petitioner's father (tenant) on the ground inter alia of non-user. The said suit has been decreed and the eviction decree has attained finality. It appears that the Petitioner/Plaintiff made an unsuccessful attempt of challenging the said eviction decree, though he was not party to the said suit. Additionally another brother of the Petitioner also challenged the eviction decree after death of Petitioner's father tenant. However the eviction decree passed in Regular Civil Suit No.635 of 2001 has attained finality.

5. The sheet anchor of submissions of Mr. Wakankar is filing of Affidavits by the legal heirs of Defendant No.1 Oan Miyajiwala accepting his tenancy claim. It appears that the suit premises are jointly owned by Defendant Nos.1 to 4. Therefore even if one out of the said four owners accept the alleged tenancy claim of the Petitioner, the same would not have any impact of the other co-owners (Defendant Nos.2 to 4).

6. In the present case, the Petitioner has thoroughly failed in proving his tenancy claim in respect of the suit premises. The assignment dated 27 March 2000 is an unregistered document. The same seeks to assign not just the business of the establishment but also the rights in respect of the suit premises. The said assignment therefore required compulsory registration. To make things worse for the Petitioner, his father, who is shown as assigner in the said deed, denied execution of any such assignment. In my view, therefore, Plaintiff has failed to prove his claim of tenancy on the basis of the alleged deed of assignment. In that view of the matter, any Affidavit filed by the heirs of one of the Defendants accepting Petitioner's tenancy claim which is found to be baseless since inception, would not inure to the benefit of the Petitioner. Such admission by heirs of one of the owners would not bind the other owners.

7. In my view therefore, no interference is warranted in the concurrent decrees passed by the Trial and the Appellate Court. Writ Petition is devoid of merits, is **dismissed** without any orders as to costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM
Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.10.04
10:28:56 +0530