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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 726 OF 2024**

Dayashankar Ramadur Gupta ... Appellant

Vs.

Shivshankar Sukhnandan Gupta ... Respondent

Mr. R. A. Shaikh and Mr. Hasan Sayed for the Appellant.

**CORAM : GAURI GODSE, J.**

**DATE : 25<sup>th</sup> NOVEMBER 2024**

**ORDER :**

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the judgment and decree passed by the First Appellate Court. The appellant's suit for possession was decreed by the trial court. In the First Appeal preferred by the defendant, trial court's decree is reversed and the suit is dismissed.

2. Learned counsel for the appellant submits that the three rent receipts produced by the plaintiff indicates that the original owner of the suit property had leased out the suit property to plaintiff's father. He submits that inspite of the rent receipt produced on record the First Appellate Court erroneously disbelieved the plaintiff's case that plaintiff is lessee of the suit property. He further submits that the

document of title produced by defendant was impounded in the trial court. He thus submits that based on an unregistered and unstamped document the defendant would not get any title to the suit property. He thus submits that the Second Appeal raises substantial questions of law on the point regarding plaintiff's leasehold rights in respect of the suit property and the defendant having no title to retain the suit property.

3. To consider the submissions made on behalf of the appellant, I have perused both the judgments. The First Appellate Court has disbelieved the rent receipts relied upon by the plaintiff on the ground that the rent receipts do not pertain to the suit property which is a flat. The First Appellate Court holds that the rent receipts produced on record by the plaintiff are pertaining to a lease regarding open land. Hence, the First Appellate Court disbelieved the plaintiff's case that the suit property which is a flat was allotted to the plaintiff's father as a lessee. Hence, the argument raised on behalf of the appellant regarding plaintiff's title to the suit property based on the rent receipt would not require any consideration by this court. The reasons recorded by the First Appellate court are based on the contents of the rent receipts.

4. The First Appellate Court has also referred to the plaintiff's

admission where he accepted that the rent receipts are not in respect of any shop or flat and that the rent receipt are only in respect of open space.

5. I do not find any illegality or perversity in the reasons recorded by the First Appellate Court in not accepting the plaintiff's title to the suit property, which is a flat as described by the plaintiff.

6. So far as the second question with regard to the defendants source of title is concerned, the First Appellate Court has referred to the documentary as well as oral evidence on record and accepted the defendant's case that he was not put in possession through the plaintiff.

7. Thus in view of the findings recorded on the plaintiff's title and his right to seek possession from the defendant the First Appellate court has reversed the trial court's findings and dismissed the suit. The First Appellate Court held that according to the plaintiff he had sub-let the suit flat to a sub-tenant from whom the defendant allegedly received possession. The First Appellate Court disbelieved the plaintiff's case for want of any evidence regarding plaintiffs contention of having any right in the suit flat based on any lease created in favour of the plaintiff. Hence for want of any evidence in

support of the plaintiff's title the First Appellate Court held that the plaintiff was not entitled to seek possession of the suit property from the defendant. The First Appellate Court also reversed the findings regarding identification of the suit property. Thus the First Appellate Court disbelieved the plaintiff's case that defendant was in unlawful possession of the suit property.

8. The reasons recorded by the First Appellate Court are based on the pleadings and evidence of the parties. I have also gone through the rent receipts relied upon by the learned counsel for the appellant. Rent receipts do not pertain to the suit property which is flat as described by the plaintiff. Hence, I do not find any illegality or perversity in the reasons recorded by the First Appellate Court.

9. In view of the findings of facts recorded by the First Appellate Court, the arguments raised on behalf of the appellant would not require any consideration by this court.

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

**[GAURI GODSE, J.]**