



Jose

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.22 OF 2025

Virendra Laxman Mandrekar
and other.

... Appellants.

Versus

Srikant Narayan Mandrekar and
other.

... Respondents.

Mr. Purushottam Ramkrishna Karpe, Advocate for the
Appellants.

CORAM: VALMIKI MENEZES, J.

DATED: 19th September, 2025

ORAL ORDER:

1. Registry to waive office objections and register the matter.
2. This is a Second Appeal filed against Judgment and Decree dated 08.05.2025 passed by the District Court in Regular Civil Appeal No.95/2023. The impugned Judgment and Decree dismisses the appeal and confirms Judgment and Decree dated 17.04.2023 passed by the Civil Judge Junior Division, Bicholim in Regular Civil Suit No.146/2014/C. The Appellant herein is the original Defendant while the Respondents are the original Plaintiffs in the suit.
3. The Respondent's suit was filed for eviction of the present

Appellant/Defendant on the grounds that the Defendant was inducted as a licensee and was not willing to vacate the suit premises. The Plaintiffs claim a title to the suit property vide Sale Deed dated 22.02.1987, on which they claim that they had constructed a shop structure whose licenses were on the name of the Plaintiff.

4. In defence, the Appellants/Defendants averred in the written statement that the suit plot bearing Survey No.69/2 of Village Carapur, though was purchased in the name of the Plaintiff, the entire finance for the plot was put up by the father of the Defendant, who is the real brother of the Plaintiff, and the Plaintiff has played fraud on the Defendant's father by purchasing the plot on his own name and thereafter, constructing therein the suit shop. An alternate defence is also taken by the Defendants that they have been in possession of the suit shop for a period which bars the suit; they have also taken a defence that the suit was barred by limitation.

5. After framing issues, the parties led evidence and based upon the same, the Trial Court has rendered findings on the title of the suit plot and the suit shop in favour of the Plaintiff. The Trial Court has, on evidence led by the parties, arrived at a conclusion that the Plaintiffs have proved their title and that the Defendant was only in permissive possession as a licensee of the suit shop and had no right to continue in possession of the same after the licence was terminated. The plea of the Defendant as to a subsequent transaction by the

Plaintiff has been negated.

6. These findings, appear to be based on the evidence on record and cannot be termed as perverse.

7. In the First Appeal before the District Court, all these findings have been confirmed after re-assessing the evidence. The findings are, therefore, concurrent to both the relevant questions i.e. question of title and the question as to whether the possession of the Defendant was permissive as a licensee.

8. It was argued by the learned Counsel for the Appellant that during the pendency of the appeal, an application under Order 41 Rule 27 CPC was moved before the Appellate Court seeking to rely upon documents which were ultimately not considered while passing the impugned Appellate Decree. Examination of the application would reveal that there is no averment made in the application to justify why the Appellant was prevented from producing the documents sought to be relied upon in the First Appeal at this stage of the trial.

9. It is trite law that the sine qua non for exercising powers under Order 41 Rule 27 is the requirement to make out a case that despite due diligence, the Applicant/Appellant was prevented from relying upon and producing such documents in evidence during the trial. In view of the fact that there is no such averment or case made out in the

application, the same ought to have been dismissed by the Trial Court at the threshold, instead of leaving it to decide the application along with the appeal. No prejudice would, therefore, result even if the application had not been considered at the stage of final hearing or while passing the Appellate Decree.

10. There is not substantial question that arises from the record of the Trial Court or the Appellate Court. The appeal is dismissed. No costs.

VALMIKI MENEZES, J.