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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 45 OF 2025
WITH
INTERIM APPLICATION NO. 802 OF 2025
IN
SECOND APPEAL NO. 45 OF 2025**

Wahid Babukhan Dakhani

.....Appellant

Vs.

Pushpak Vidhyadhar Doshi

.....Respondent

Mr. Ashok B. Tajane Advocate for the Appellant
Mr. Mandar Soman for the Respondent

CORAM : GAURI GODSE, J.

DATE : 31st JANUARY 2025

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ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by the original defendant to challenge the concurrent judgments and decrees directing the appellant to hand over possession of the suit property.
2. Learned counsel for the appellant submits that the appellant's father was inducted as a tenant in respect of the suit property. He

submits that the documents on record clearly indicates that the appellant is in possession of the suit property as a tenant. He submits that the first Appellate Court has not correctly appreciated the evidence on record which clearly indicates that the rent receipts produced in the name of Babukhan @ Nannekhan Rjaekhan was the defendant's father. He submits that the reasons recorded by the first Appellate Court in holding that the rent receipts were in the name of a different person, is an incorrect appreciation of the evidence on record. He further submits that since the defendant was in possession of the suit property as a tenant, the Civil Court would not get jurisdiction to decide the suit.

3. Learned counsel for the appellant further submits that the suit is filed on the ground that the defendant is a trespasser. He, thus, submits that it was the plaintiff's burden to prove that the defendant was a trespasser. He, thus, submits that the documents on record in the form of rent receipts support the defendant's case that his father was inducted in the suit property and thus, he cannot be termed as a trespasser. He, thus, submits that the aforesaid grounds raise substantial questions of law.

4. I have perused both the judgments. The suit is filed for possession of a suit property described as municipal house number admeasuring 561 square feet alongwith the land and shed as specifically described in the plaint. The defendant's contention regarding he occupying the suit property in capacity of a tenant through his father is examined by both the Courts. The trial Court recorded findings with regard to the defendant's contention of being in possession in respect of the suit property as a tenant and disbelieved his theory of inducting his father as a tenant in respect of the property as described in the plaint. The licence under The Shops and Establishment Act, 1948 is examined by the trial Court. On examining the documents, the trial Court held that the defendant failed to prove that all these documents would indicate that the plaintiff's father was inducted as a tenant in respect of the suit property.

5. The trial Court has referred to two earlier suits filed by the defendant. In the suit filed for declaration of his tenancy rights, the suit property mentioned by the plaintiff was an open plot and the shop therein. The description in the earlier suit and the description in the present suit and the documents relied upon by the defendant are exhaustively dealt with by the trial Court. The defendant's suit for

declaration of tenancy rights was dismissed as abated. The suit claim of declaration of tenancy was not carried forward by the defendant by filing any appeal. The defendant had filed another suit for challenging the notice issued with regard to unauthorised construction. The said suit was filed against the Government and the Archaeological Department. In the said suit, the defendant had prayed for a declaration that there was no unauthorised construction and the structure was an old shop. It is not in dispute that the said suit was dismissed. The said dismissal is also not further challenged by the defendant. Thus, by examining all the documents relied upon by the defendant the claim of tenancy rights in respect of the suit property was disbelieved by the trial Court.

6. The first Appellate Court confirmed these findings. In paragraph 26 onwards, the first Appellate Court has in detail examined all the contentions raised by the defendant with regard to the tenancy rights. The earlier suits and the pleadings are also discussed by the first Appellate Court. In the suit filed for declaration of tenancy rights, the defendant had sought declaration that he was lawful tenant of an open space where he had constructed a tin shed. The present suit property alleging the defendant to be a trespasser is a property numbered as a

municipal house with a description as stated in the plaint. The first Appellate Court has thus, after verifying the pleadings in the earlier suits and the present suit has disbelieved the defendant's plea of tenancy in respect of the suit property. None of the documents relied upon by the defendant as pointed out in this second appeal are relatable to the suit property as described in the plaint.

7. Learned counsel for the appellant also argued that the application was filed for producing additional evidence. He submits that the said application was allowed and the appellant was permitted to place on record the written statement in the suit for declaration of tenancy and the photographs and old rent receipts. He, further submits that the first Appellate Court failed to refer to the said documents.

8. I have perused the reasons recorded by the first Appellate Court. I have also perused the written statement sought to be produced by way of additional evidence. Dismissal of earlier two suits by the defendant has attained finality. The description in the present suit is examined by both the Courts based on the documents on record. The findings recorded by both the Courts on the description of the property, is based on the defendant's claim of tenancy by referring to all the

documentary evidence on record. In view of the findings recorded, a specific reference to the written statement sought to be argued on behalf of the appellant in this second appeal is insignificant. The rent receipts and the earlier pleadings is exhaustively discussed by the first Appellate Court. I do not see any illegality or perversity in the reasons recorded by both the Courts in arriving at a conclusion that the defendant was unable to show any tenancy rights in respect of the suit property.

9. The arguments raised on behalf of the appellant in this second appeal would require reappreciation of pleadings and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908. In view of the concurrent findings recorded on facts which is based on all the documents on record, the second appeal 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.

11. In view of dismissal of second appeal, Interim Application No. 802 of 2025 is disposed of as infructuous.

12. Learned counsel for the appellant at this stage seeks stay to the execution of the impugned decree.

13. Learned counsel for the respondent opposed the prayer. He submits that till date the decree was never stayed.

14. Since the impugned decree was never stayed, I do not see any reason to stay the decree at this stage when the second appeal is dismissed as there is no substantial question of law. Hence, the prayer is rejected.

[GAURI GODSE, J.]