

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 284 OF 2022
WITH
INTERIM APPLICATION NO. 2039 OF 2022
WITH
INTERIM APPLICATION NO. 12781 OF 2024
IN
SECOND APPEAL NO. 284 OF 2022
WITH
SECOND APPEAL NO. 285 OF 2022**

Parvatibai Revanayya Hiremath ... Appellant/Applicant

vs.

Chandrashekhar Panchayya Swami ... Respondent

Mr. I. M. Khairdi for the Appellant/Applicant.

Mr. Samir Kumbhakoni a/w Anjali Shaw a/w Chaitanya Joshi for the Respondent.

Mr. Chandrashekhar P. Swami- Respondent, Present in Court.

CORAM : GAURI GODSE, J.

DATED : 27th JANUARY 2025

ORDER:

1. Both these appeals are arising out of a suit filed by the respondent for possession and a counter claim filed by the appellant seeking perfection of title by way of adverse possession. The trial Court dismissed the suit and the counter claim. Hence, both the parties had filed separate appeals.

2. The appeals are decided by a common judgment. The first appellate Court allowed the plaintiff's appeal and decreed the suit

directing the defendant to hand over possession of the suit property. The defendant's appeal against dismissal of his counter claim is dismissed by the first appellate Court. Hence, the defendant has preferred these appeals.

3. Learned counsel for the appellant submits that the defendant was inducted as tenant in the suit property. He submits that the appellant has filed Interim Application No.12781 of 2024 for permission to produce additional documents. He submits that the documents sought to be produced by way of additional evidence indicates that even the plaintiff had referred the defendant as his tenant at the time of filing complaint with the Municipal Corporation, alleging that the defendant had carried out an unauthorized construction.

4. Learned counsel for the appellant further submits that the first appellate Court has not considered the evidence on record in proper perspective. He submits that the evidence led by the plaintiff through power of attorney holder could not have been accepted in support of the plaintiff's contentions that the defendant was occupying the suit property only as permissive user. He submits that absence of any pleadings by the plaintiffs regarding the particulars of inducting the defendant as permissive user was a sufficient

ground to disbelieve the plaintiff's theory of the defendant being in permissive possession. He thus submits that the second appeal would require consideration on the ground that the first appellate Court has decreed the suit by not properly appreciating the evidence on record. He submits that the additional evidence sought to be produced by the plaintiff would also require consideration by this Court.

5. I have perused the papers of both the second appeals and the application for additional evidence. In response to the plaintiff's contention that the defendant was occupying the premises as permissive user, the defendant raised the plea of tenancy. The defendant also produced on record the judgment in her suit i.e., Suit No.800 of 2013, where she claimed to be a tenant of the suit property. It is not in dispute that the defendant's plea of tenancy was disbelieved in her suit and the suit was dismissed. It appears that defendant had filed an appeal challenging dismissal of her suit. However, the same is dismissed in default.

6. In view of this admitted position that the defendant's plea of tenancy was disbelieved in her own suit, the issue of the defendant's plea of tenancy cannot be reopened in this second appeal by referring to some new documents for the first time in

second appeal.

7. A perusal of the reasons recorded by the first appellate Court indicates that the defendant has been found to be residing in the suit property since 1985-86. In view of the rival pleadings, the first appellate Court has examined the issue regarding the defendant's nature of possession. The defendant in the alternative prayed for declaration of perfection of title by way of adverse possession. However, at the time of trial, the defendant has not chosen either of the alternative plea and has continued with the suit based on both the pleas. Hence, the first appellate Court has referred to both the alternative pleas of the defendant i.e., being in possession as tenant and the plea of perfection of title by way of adverse possession. The first appellate Court has accepted the plaintiff's theory of the defendant being in permissive possession.

8. In the absence of any supporting documents by the defendant, to either prove her theory of she being inducted as tenant or her plea of adverse possession, the defendant would have no right to retain possession of the suit property. The plaintiff's title over the suit property is not in dispute. The defendant's plea of tenancy is already disbelieved in her prior suit, which has attained finality. The first appellate court on examination of the evidence,

disbelieved the defendant's plea of tenancy. The appellant was unable to prove her plea of perfection of title by way of adverse possession. The issue of adverse possession would depend upon the factual aspects, which are already dealt with by the first appellate Court. In the absence of any specific pleadings and supporting evidence, the reasons recorded to disbelieve the plea of adverse possession by the first appellate Court cannot be faulted.

9. I do not find any illegality or perversity in the reasons recorded by the first appellate Court. The impugned judgment deciding both the appeals is based on the correct appreciation of the oral and the documentary evidence before the Court.

10. The reasons recorded in the impugned judgment are based on the rival pleadings and the evidence. The arguments raised on behalf of the appellant would amount to re-appreciation of the evidence on record, which is not permissible under Section 100 of Code of Civil Procedure.

11. Both the Second Appeals do not raise any substantial question of law. Hence, the second appeals are dismissed.

12. In view of dismissal of the defendant's prior suit claiming tenancy rights, the application for additional evidence cannot be entertained in this second appeal. There are no valid grounds

pleaded for producing the documents for the first time in this Court. Hence, the application is rejected.

13. In view of dismissal of the second appeal all other pending applications are disposed of as infructuous.

14. At this stage, learned counsel for the appellant seeks stay to the execution of the impugned decree. Learned counsel for the plaintiff opposes grant of stay on the ground that the defendant is not occupying the suit premises and she has already shifted to her own premises within 300 metres of the suit property. Learned counsel for the plaintiff on instructions of plaintiff, who is present in the Court submits that the next date in the execution proceedings is 4th February 2025. He on instructions submits that the plaintiff will not press for issuance of possession warrant for a period of three weeks from today.

15. In view of aforesaid, I do not see any reason to stay the execution of the impugned decree.

16. It is clarified that the statement on behalf of the plaintiff is subject to the appellant not creating any third party interest in the suit property or parting possession in favour of any third party.

(GAURI GODSE, J.)