

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

**SECOND APPEAL NO.281 OF 2024
WITH
INTERIM APPLICATION NO.8394 OF 2024
IN
SECOND APPEAL NO.281 OF 2024**

Dnyaneshwar Raghunath Bhoir
V/S

....Appellant

Bhimabai Rajaram Bhoir
since deceased & Ors.

....Respondents

Mr. D.S. Mhaispurkar a/w Mr. Hrishikesh Pawaskar *for the Appellant.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 13 JANUARY 2025.**

P.C.:

1. This is a Second Appeal filed challenging judgment and order dated 1 February 2024 passed by the learned District Judge-1, Kalyan, dismissing Regular Civil Appeal No.66 of 2012 filed by the Appellant and confirming the judgment and decree dated 29 September 2011 passed by the learned 2nd Joint Civil Judge Senior Division, Kalyan. The Trial Court allowed the suit filed by the Plaintiffs issuing a declaration that the Defendants do not have any right, title or interest in the suit property and directing them to handover vacant and peaceful possession thereof in favour of Plaintiffs.

2. I have heard Mr. Mhaispurkar, the learned counsel appearing for Appellant and have considered the submissions canvassed by him.

3. It appears that suit property bearing plot No.1, CTS No.1132 admeasuring 257.2 square meters was allotted by the Government of Maharashtra in favour of Plaintiffs' father named Rajaram Bhoir by granting Sanad on 29 November 1977. A finding of fact is recorded that the father of Defendant No.1 was in service with the Indian Railways and therefore no Sanad could have been issued in his name in respect of the land in question. It is Plaintiffs' case that Rajaram constructed the house on the land so allotted to him by the State Government and that the father of Defendant No.1-Raghunath was permitted to occupy some portion of the said house on humanitarian grounds. The sheet-anchor of submissions of Mr. Mhaispurkar is issuance of notice alleging encroachment to the Appellant as well as payment of Municipal taxes in respect of the house by the Appellant. A factual enquiry has been conducted by the Trial and the Appellate Courts as to whether Defendants have any semblance of right in the suit property merely on the basis of issuance of notice by the Municipal Corporation and on account of payment of Municipal assessment taxes by them. After weighing the evidence on record the Trial and the Appellate Courts have recorded concurrent findings of fact about absence of any right, title or interest by the Defendants either in the land

or in the house. Thus what is conducted by the Trial and the Appellate Courts is essentially a fact finding enquiry. No question of law, much less any substantial question of law is involved in the present case for this Court to exercise jurisdiction under section 100 of the Code of Civil Procedure, 1908. In absence of any substantial question of law, I am not inclined to entertain the Second Appeal, which is accordingly **rejected**.

4. After the order is passed Mr. Mhaispurkar would pray for continuation of *ad-interim* order passed by this Court on 9 May 2024. It appears that the *ad-interim* relief was granted on 9 May 2024 only on account of the Second Appeal being moved in a week preceding ensuing summer vacations and without considering the merits of the Appeal. However considering the fact that rejection of the Second Appeal would entail possible eviction of the Appellant from the suit property, the interim order dated 9 May 2024 shall continue to operate for a period of four weeks.

5. In view of disposal of the Second Appeal, the Interim Application for stay does not survive and the same is **disposed of** accordingly.

(SANDEEP V. MARNE, J.)