

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

**SECOND APPEAL NO. 599 OF 2024
IN
REGULAR CIVIL APPEAL NO. 115 OF 2011
IN
REGULAR CIVIL SUIT NO. 470 OF 2005
WITH
INTERIM APPLICATION NO. 13175 OF 2024
IN
SECOND APPEAL NO. 599 OF 2024**

Ronnie Lawrence Fernandes	... Appellant
Versus	
Hoshbanoo Aspi Irani (Decd.) Thr.	
Her Legal Heir Ardeshir Irani And Anr	... Respondents

Mr. M. P. Vashi, *Senior Advocate for the Appellant.*

Mr. Hasan Sayed *i/b R.A. Shaikh for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

DATE : 10 FEBRUARY 2025.

P.C. :

1) The Second Appeal challenges judgment and order dated 15 April 2024 passed by the Principal District Judge, Thane dismissing Regular Civil Appeal No. 115 of 2011 and confirming the decree dated 30 April 2011 passed by the 3rd Joint Civil Judge, Senior Division, Thane decreeing Plaintiff's Regular Civil Suit No. 470 of 2005.

2) I have heard Mr. Vashi, the learned senior advocate appearing for the Appellant/Defendant and Mr. Sayed, the learned counsel appearing for Respondent No.2/Plaintiff.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that Plaintiffs approached the Trial Court with a case that Defendant's father was inducted in the suit premises as a gratuitous licensee in connection with his service as a security guard. Plaintiffs examined constituted attorney before the Trial Court. The Defendant failed to lead evidence. The suit was accordingly decreed in absence of any evidence on the part of Defendant, who had raised defence in the written statement that he was a protected tenant in respect of the suit premises. However no evidence was led by the Defendant to prove his claim of tenancy.

4) Mr. Vashi would submit that the primary burden was on the Plaintiffs to prove their case and Plaintiffs ought to have personally led evidence with regard to alleged induction of Defendant's father into the suit premises as security guard. In my view, once Plaintiffs admitted the presence of Defendant in the suit premises by branding it as a mere permissive use and when the Defendant pleaded the case that he is tenant in respect of the suit premises, the burden completely shifted on the Defendant to prove his valid possession as a tenant thereof. In the present case, therefore, Defendant's failure to lead evidence to prove his tenancy claim was clearly fatal. A factual enquiry is conducted by the Trial and the Appellate Courts not involving any substantial question of law for entertaining the present Appeal. The Appeal is accordingly **dismissed**.

5) In view of rejection of Second Appeal, Interim Application does not survive and the same stands disposed of.

[SANDEEP V. MARNE, J.]