

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 337 OF 2025
WITH
INTERIM APPLICATION NO. 8053 OF 2025

Prakash Gyandev Kamble And Ors ...Appellants/Applicants

Versus

Rajanikant Pandurang Mayekar & Ors ...Respondent

Mr. K. Solanki a/w Ms. Desha Solanki for the Appellants/Applicants.
Mr. Prasad Mundhe a/w Ritu Gehlot i/b M/s. S.M. Jain Associates for
Respondent No. 1

CORAM : M.M. SATHAYE, J.

DATE : 17th JUNE, 2025

P.C. :

1. Heard learned counsel for the Appellants and Respondent No. 1. Perused the record.

2. The Appellants are original Defendants in a suit which is filed by the Respondent No.1 (sole Plaintiff). The suit is filed for possession, injunction and mesne profits. On the assertion of title, the Respondent sought declaration that the Appellants are trespassers in respect of the suit property which is Flat No.8. Prayer was made for seeking possession of the suit property. Certain other alternative prayers including that all mesne profits/compensation were also made. The Defendants including the Appellants filed written-statement/s and contested the suit. The Trial Court framed issues and after considering the evidence on record led by both sides, held that Appellants could not prove that they have purchased flat Nos. 7 and 8 from Janardhan

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Mayekar, who was brother of the Plaintiff. The suit came to be decreed directing the Appellants to handover vacant possession of the flat No. 8 and an injunction was also granted restraining the Appellants from creating 3rd party interest in the said flat.

3. The Appellants challenged the judgment of the Trial Court by filing an appeal in the District Court. The Appellate Court framed points for consideration and on re-appreciation of the evidence, found that Respondent/Plaintiff is entitled to possession of the flat and also found that the Appellants could not prove that they have purchased the suit flat. Finally, under the impugned Judgment and Decree the Appellate Court has confirmed the Judgment and Decree of the Trial Court.

4. The Appellants are thus before this Court in Second Appeal challenging the concurrent findings of fact and they are required to make out substantial question of law as required under Section 100 of the Code of Civil Procedure, 1908.

5. Learned counsel for the Appellants submitted that the Trial Court as well as the Appellate Court, while decreeing the said suit for possession has traveled beyond the pleadings of the Plaintiff. He submits that plaintiff has not pleaded that he is the owner of the suit flat. He further submits that the Will on the basis of which the Plaintiff claims title, is not genuine and aspect of title of the Plaintiff has not been considered in proper perspective.

6. It is submitted that Appellants are in possession of the suit flat being inducted by brother of the Plaintiff. Admittedly, the case of

the Appellants is that of 'oral agreement' under which purportedly Rs.2 lakh was paid as earnest money. On the query by the Court, it is informed that no suit for specific performance of the 'oral agreement' is filed by the Appellants. It is also informed to the Court that a suit for injunction for protecting the possession of the suit flat was filed, but the same has been dismissed for default.

7. I have perused the plaint. The opening paragraph of the plaint shows that the Plaintiff has asserted ownership of Flat Nos. 7 and 8. The case of the Plaintiff, as it emerges from the plaint, in short, is that the Appellants were inducted in the suit flat by Defendant No.4 one Mr. Kanhayyalal Vani and it was without the knowledge of both, the Plaintiff and his elder brother Janardan Mayekar. The Plaintiff was not well at the relevant time and when Defendant No.4 Mr. Vani was confronted about induction of the Appellants, Defendant Mo.4 informed that he was going to arrange another flat for them. It is the case of the Plaintiff that he was required to file police complaint about illegal occupation of the Appellants. It is pleaded that the Appellants are occupying the suit flat without paying any compensation and therefore, alternative prayer for compensation was also made. It is also specifically pleaded that the manner in which the Appellants have got possession of the suit flat, amounts to property grabbing.

8. In view of what is recorded above, there is no merit in the arguments of the Appellants that there is no pleading regarding ownership of the flat and that the Courts have traveled beyond the pleadings.

9. So far as the argument about Will relied upon by the

Plaintiff is concerned, it is material to note that the Appellate Court has recorded that the Plaintiff has acquired the title over the suit flat as per Will dated 08.09.1998 which is an exhibited document as Exh.69. The Appellate Court has recorded that the suit filed by the Appellants (R.C.S. No. 702/2014), only for injunction, has been dismissed on 20.12.2019. It is further recorded that no evidence in support of the claim of the alleged purchase through oral agreement has been led. The Appellate Court also recorded variance in the evidence led by the Appellants about payment of alleged earnest money under so called 'oral agreement'. In such facts and circumstances, when the Appellants are admittedly not any beneficiary under the Will, on the basis of which Plaintiff has filed the suit, omnibus argument that Will is not genuine cannot be accepted in the Second Appeal. The Trial Court and the Appellate Court has found sufficient material showing title to the Plaintiff, vis-a-vis the Appellants, entitling him to seek possession of the suit flat.

10. Judgments of **C. Gopal Vs. C. Bhaskar & Ors. [Civil Appeal No. 6067 of 2008 Order dated 03.09.2008]** and **Sri Shivaji Balaram Haibatti Vs. Sri Avinash Maruthi Pawar [(2017) 12 S.C.R.344]** are relied upon in support of the Appellant's case. In the facts and circumstances of this case, as narrated above, it is clear that the Appellants can not be said to have any interest in the estate. Also sufficient pleadings are found in place for the Court to pass the decree. Hence the said judgments will not advance the Appellants' case.

11. In the aforesaid facts and circumstances, there is no question of law, much less substantial question of law involved. Concurrent findings are challenged. No interference is called for. The

second appeal and pending interim application are accordingly dismissed. No order as to costs.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)