



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 121/2025

(Narayan s/o. Pandurang Dohare & ors. Vs. Santoshkumar s/o. Ramkishor Jaiswal)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.V. Khare, Advocate for appellants.

CORAM: ROHIT W. JOSHI, J.

DATED : 06/05/2025.

Heard.

2. The appellant has suffered from concurrent decrees for possession. The suit property is a house property which was initially owned by one Hiralal and grand son of Hiralal has sold property to the plaintiff. The plaintiff filed suit for possession on the basis of title. The defendants claimed that the grand son of original owner Hiralal was not authorized to transfer the property since Hiralal had executed Will with respect to the suit property in favour of Pandurang father of the defendants. The defendants accordingly claimed ownership over the suit property. It is undisputed that copy of the said Will is not placed on record. As against this sale-deed on the basis of which suit for possession is filed, is proved and exhibited during the course of evidence of the plaintiff. The plaintiff has thus proved his title by virtue of sale-deed executed in favour of his father. As against this, the defendants have failed to prove their ownership since the Will itself is not filed on record. It needs to be

mentioned that affidavit in view examination-in-chief of defendant No. 5 was filed, however, she did not turn up for recording her further examination-in-chief, as also for facing cross-examination. Learned Court has therefore, rightly held that the plaintiff has proved his ownership and the defendants had failed to prove title over the property on the basis of alleged Will.

3. The other contention advanced by learned counsel for appellants is that the defendants have become owners of the suit property by way of adverse possession. The defendants have challenged the title of plaintiff. Since they are not admitting the title of plaintiff, they cannot set up adverse possession against the plaintiff. Apart from this, they have not led any evidence to establish the case of adverse possession. The said contention is liable to be rejected.

4. The last contention raised by learned counsel for appellants is with respect to the applicability of provisions of Maharashtra Rent Control Act, 1999. Since the title of the plaintiff is disputed, the alleged tenancy is obviously forfeited. In that view of the matter, the defendants cannot claim protection of the Rent Act.

5. In view of the reasons mentioned above, no substantial question of law arises for consideration in the present second appeal and the same is dismissed as such.

(ROHIT W. JOSHI, J.)