

SECOND APPEAL NO. 173 of 2010

Mr. S.S.Dani, Senior Advocate, assisted by Mr.Pankaj Deokar, Advocate, for appellant.
Mr. A.R.Kapadnis, Advocate, I/b Mr. Vinod Jadhav, Advocate for respondent.

CORAM : R.K.Deshpande, J.
DATED : 30th JUNE, 2015.

P.C.

The trial Court passed a decree of permanent injunction restraining the defendant permanently from obstructing possession of the plaintiff over the suit property in Regular Civil Suit No. 141 of 1983. This is maintained by the lower appellate Court, which dismissed the Regular Civil Appeal No. 132 of 1996, on 08.01.2010. The original defendant is, therefore, before this Court in this second appeal.

The claim of the plaintiff in the trial Court for possession of the suit property was based upon two sale deeds dated 15.02.1978 and 05.05.1983.

The Courts below have found the plaintiff to be in possession of these properties on the basis of the sale deeds.

In view of this, it was not necessary for the plaintiff to ask for a declaration of title over the suit properties. Both the courts below could not have gone into the question of validity of the sale deeds dated 15.02.1978 and 05.05.1983, particularly when there was no counter claim filed. Whatever observations are made by the Courts below against the appellant/original defendant in respect of these two documents are only for the purposes of finding out the factum of possession of the parties over the suit properties.

Both the learned counsels, therefore, agree that keeping open the question of validity of the sale deeds dated 15.02.1978 and 05.05.1983, the second appeal can be disposed of maintaining the decree passed by the trial Court, and confirmed in appeal.

In view of above, the second appeal is dismissed, as no substantial question of law arises out of the findings recorded by the Courts below that the plaintiff is found to be in possession of the suit properties. None of the observations on the question of title either of the plaintiff or of the

defendant shall come in the way of the parties to file and prosecute a suit based on title or challenge to the sale deeds.

(R.K.DESHPANDE, J.)

Rvjalit