

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

**SECOND APPEAL NO. 588 OF 2014
WITH
CIVIL APPLICATION NO. 1414 OF 2014**

Sou. Sunita Dinanath Gawade ... Appellant.
V/s.
Smt. Mahalaxmi Shiva Sawant & Ors. ... Respondents

Mr. Milind Parab & Deepak Patil i/b Milind Parab & Asso. for the
appellant.

**CORAM : K. K. TATED, J.
DATED : 23/10/2015.**

PC.:

. Heard learned Counsel for the appellant.

2 Civil Application no. 1414 of 2014 is not on board. At the
request of learned Counsel for the appellant, same is taken on board.

3 This Second Appeal is preferred by defendant no.1 challenging
the concurrent findings of facts recorded by both the Courts below.

4 In the present proceeding, the respondent plaintiff filed Regular
Civil Suit no. 46 of 2001 in the Court of Civil Judge, Junior Division,
Vengurla for declaration and permanent injunction. It was the case of
the plaintiffs that they were the owners of the suit property i.e. landed
property survey no. 223 Hissa No.1, Survey No. 224 Hissa No.1
situated at village Ansur and village Bhendmala. It was the case of the
plaintiffs that they were in possession of the suit property and owners

to the extent of 6/7th share of the suit property. Considering their evidence on record and documents, the Trial Court framed the following issues:

ISSUES	FINDINGS
1. Whether the plaintiffs prove that they have legal interest and legal title in the suit lands?	In the affirmative.
2. Whether the plaintiffs prove that they are in legal possession of the suit lands?	In the affirmative.
3. Whether the plaintiffs prove that the sale deed dated 25.11.1968 is illegal and void?	In the affirmative.
4. Whether the plaintiffs prove that they have 6/7 th share in the suit lands?	In the affirmative.
5. Whether the suit is properly valued for the purpose of Court fee and jurisdiction?	In the affirmative.
6. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed?	In the affirmative.
7. Whether in the alternative the plaintiffs are entitled for the relief of partition and separate possession?	In the negative.
8. Whether defendant No.1 prove that deceased Dhondu Ganu Sawant executed will-deed dated 24.06.1968 in his favour?	In the negative.
9. What order and decree?	As per final order

5 The issue no.6 was in respect of permanent injunction as prayed by the plaintiffs. The issue no.8 in respect of whether the defendant no.1 proved that deceased Dhondu Ganu Wawant executed will dated

24.06.1968 in his favour. The Trial Court by decree dated 28.04.2008 declared that plaintiffs and defendant no.8 are the owners of the suit property to the extent of 6/7th share and restrained the defendant no.1 from disturbing the peaceful possession.

6 Being aggrieved by the said decree, the defendant no.1 preferred the Appeal being Regular Civil Appeal no. 85 of 2008 before the Appellate Court. The Appellate Court framed following points for consideration.

POINTS	FINDINGS
1. Do plaintiffs prove their title over the 6/7 th share in the suit land?	Plaintiffs have proved title over 6/7 th share in suit land as owner and 1/7 th share as tenant, along with defendant no.8.
2. Do plaintiffs prove their lawful possession over the entire suit land?	Yes
3. Do the plaintiffs prove that the sale deed dated 25.11.1968 of 1/7 th share in the suit land executed by Pandurang Ladu Parab in favour of Gopal Bhikaji Sawant is void document.	Yes
4. Does the defendant no.1 prove that late Dhondur Ganu Sawant executed his last valid Will dated 24.06.1968 and bequeathed his 6/7 th share in the suit land in favour of Gopal Bhika Sawant?	No
5. Whether plaintiffs are entitled to declaration?	Yes
6. Whether plaintiffs are entitled to perpetual injunction against the defendant no.1?	Yes
7. Whether suit is properly valued for the	Yes

purpose of court fee stamp jurisdiction?	
8. Whether the decree passed by the Trial Court is correct and proper?	Yes
9. What order?	Appeal is dismissed with costs.

7 Even the Appellate Court also held that defendant no.1 failed to prove his possession over the suit property. Hence, the Appellate Court by decree dated 22.01.2014 dismissed the Appeal with costs. Hence, the present Second Appeal.

8 The learned Counsel Mr. Milind Parab appearing on behalf of defendant no.1 submits that the Judgment and Decree passed by both the Courts below is required to be set aside only on the ground that both the Courts failed to consider that the suit property to the extent of 1/7th share was purchased by the defendant no.1 and since then he was/is in possession of the same. He submits that both the Courts failed to consider these facts. He submits that though the Trial Court held that plaintiffs and defendant no.8 are the owners of the suit property to the extent of 6/7th share only, the Trial Court granted injunction in respect of entire suit property which is contrary to the facts and law. Hence, the Judgment and Decree passed by both the Courts below is required to be set aside to the extent of injunction, restraining the defendant no.1 from interfering the possession of the plaintiffs to the extent of 1/7th share.

9 I heard learned Counsel for the appellant at length. It is to be noted that in the present proceeding, both the Courts below have categorically held that the defendant no.1 failed to prove his possession

in respect of suit property. Even both the Courts below specifically held that Sale Deed dated 25.11.1968 executed by Pandurang Ladu Parab in favour of Gopal Bhiku Sawant was void document in respect of 1/7th share of the suit property. Both the Courts categorically held that the Will executed by Dhondur Ganu Sawant dated 24.06.1968 was not valid documents. This shows that defendant no.1 failed to prove his possession over 1/7th share of suit property.

10 Considering the fact that the defendant no.1 failed to prove his possession over the suit property to the extent of 1/7th share and as the concurrent findings of facts recorded by both the Court below, I do not find any substance in the present Second Appeal.

11 Hence, Second Appeal stands rejected.

12 In view of rejection of Second Appeal, nothing survives in the Civil Application. Same stands dismissed as infructuous.

(K.K.TATED, J.)