

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.57 OF 2015

Smt. Sajatai @ Sindhu Raghunath Sutar... Appellant

Vs.

Shri. Rajaram Maruti Sutar Respondents
since deceased thru' LRs & Ors.

Mr. Rahul Walvekar, Advocate for the Appellant.
None for the respondents.

Coram : Smt. R.P SondurBaldota, J.

Date : 28th January, 2015

P.C.

1 The appellant is the original plaintiff, who had filed Regular Civil Suit No. 360 of 1989 for injunction simplicitor to restrain the respondents from disturbing his possession of the suit plot of land No.321, admeasuring 40 x 140. According to the appellant, it was the self acquired property of her husband and business of Parvati Servicing Station of drilling and tractor repairing workshop being run therefrom. There is a room admeasuring 10 ft. x 10 ft. situate

on the suit plot of land. The defendants to the suit were the brothers-in-law and father-in-law of the appellant. During the pendency of the proceedings, original defendants no.1, 3 and 6 expired. Their heirs have been brought on record. The defendants contested the suit denying that the suit plot is the self acquired property of the husband of the appellant. They also denied that the appellant is in exclusive possession of the entire plot of land. According to them, the husband of the appellant was carrying on business only on a portion of the property. Original defendants no.4 and 5 have also been carrying on their independent businesses from the suit plot of land in the name and style of "Auto Servicing Station" and "Drilling Workshop and Vulcanising". The trial court, on appreciation of the evidence, held that the appellant is in possession of only a portion of land i.e. the land described in paragraph 1(D) and 1(E), open space adjoining thereto and middle portion situate between drilling workshop, tractor repairs workshop and Parvati Servicing Station and protected possession in respect thereof. The possession of the appellant is more particularly shown in the map attached to the plaint, which forms part of the decree. Being aggrieved by the judgment and decree of denial of protection of possession in respect of remaining portion of the suit land, the appellant preferred First Appeal to the District Court. By the order

dtd.18th October, 2014, the appeal is dismissed confirming the judgment and decree of the trial court. Perusal of the impugned judgments shows that the finding of facts recorded therein are supported by the material on record and there cannot be any interference with such findings of fact in the Second Appeal.

2 Mr. Walvekar, the learned advocate for the appellant submits that the substantial question of law arising in the Second Appeal would be whether the lower appellate court could have disposed off the appeal without deciding the appellant's application under Order 41, Rule 27 CPC for production of additional evidence. He produces a copy of the application. Perusal of which shows that the documents of photographs desired to be produced thereunder could have been produced for want of the negatives. Besides some of the paragraphs relate to certain subsequent events which would be irrelevant for deciding the appeal. Hence, there is no substance in the submission. The appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)