

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.512 of 2011

(Shri Gngaji Janu Thakur and another v. Shri Shridhar Nathu Ghanekar nd
others)

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

Ms Geeta P. Mulekar, Advocate for Appellants.
Shri Santosh S. Jagtap, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.

Dated : 16th June, 2015

The Trial Court dismissed the suit for grant of permanent injunction on the basis of the title and possession of the plaintiffs over the suit property. The counter-claim by the defendants for grant of specific performance of contract dated 18-2-1965 was decreed subject to sanction by the Collector under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948. This decision in Regular Civil Suit No.18 of 2002 delivered on 17-6-2006 was the subject-matter of challenge in Civil Appeal No.167 of 2006, which is allowed by the lower Appellate Court by setting aside the decree passed by the Trial Court in favour of the defendants, and the decree for grant of perpetual injunction was passed in favour of the plaintiffs.

The learned counsel for the appellants has urged that the plaintiffs were required to file two separate appeals from the decision of the Trial Court – one challenging the dismissal of the suit, and the other challenging the decree passed in the counter-claim filed by the defendants. She submits that instead of filing two separate appeals, if one appeal has been preferred, the

Appellate Court could not have reversed the decree passed by the Trial Court in such an appeal. It is the further submission of the learned counsel for the appellants that the appellant-defendants have established their possession over the suit property on the basis of the agreement dated 18-2-1965. Hence, the Trial Court was right in passing a decree for specific performance, particularly when the entire amount of consideration was paid.

So far as the first ground of challenge regarding filing of two appeals is concerned, undisputedly, only one appeal was preferred challenging the dismissal of the suit and also challenging the decree passed in the counter-claim. Perusal of the memo of appeal shows that the grounds of challenge are raised against the findings recorded on all the issues by the Trial Court. The court fee has also been paid on the valuation of the appeal in the counter-claim. The entire decree passed by the Trial Court is challenged and I do not find any substantial question of law, which arises for consideration by this Court.

So far as the finding regarding possession is concerned, both the Courts below have recorded the finding after taking into consideration the evidence relied upon by the parties. The Appellate Court has taken a possible view of the matter and recorded the finding that the plaintiffs have established their possession over the suit property, and in the absence of proof in respect of part performance of contract, as required by Section 53A of the Transfer of Property Act, 1882, no substantial question of law arises in respect of challenge to the dismissal of the counter-claim by the lower Appellate Court.

The decision of the Apex Court relied upon by the learned counsel for the appellants in the case of *Premier Tyres Limited v. Kerala State Road Transport Corporation*, reported in *1993 Supp (2) SCC 146*, turns upon its own facts. It was not a case where the decree passed by the Trial Court was composite

and the challenge in the appeal was to the entire decree. Hence, the said decision has no application to the facts of the present case.

In the result, the second appeal is dismissed.

Judge.

Lanjewar