

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

**SECOND APPEAL NO.183 OF 2014
WITH
CIVIL APPLICATION NO.457 OF 2014**

Shri Narayan Krishna Harchande .. Appellant

Vs.

Shri Dhondiram Krishna Harchande .. Respondent

Mr.Manoj P. Patil for the appellant

Mr.Divesh S. Chamboowala for the respondent

**CORAM : K.K.TATED, J.
DATED : 23/09/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Second Appeal is preferred by defendant challenging the concurrent finding of fact recorded by both the courts below.
- 3 In the present proceeding, respondent plaintiff filed Regular Civil Suit No.84 of 2010 for perpetual injunction restraining defendant from disturbing his peaceful possession of the suit plot No.20 in city survey No.219/b in Ganeshnagar housing society situated at Mahabaleshwar. The Trial Court on the basis of membership of the Co-op.Society as well as the documents on record held that the plaintiff proved his case for

perpetual injunction and restrained the appellant defendant from disturbing the plaintiff's possession of the suit property. Being aggrieved by the said decree passed by the Trial Court dated 1.10.2010 the defendant preferred Regular Civil Appeal No.287 of 2010. In that Appeal, the appellate court framed following points for consideration:

No.	Points	Findings
1)	Whether the plaintiff proves that he is exclusive owner and possessor of the suit property ?	Yes
2)	Whether the plaintiff proves that the defendant has obstructed his possession ?	Yes
3)	Whether the plaintiff is entitled for perpetual injunction, as sought ?	Yes
4)	Whether the impugned judgment and decree requires interference of this court ?	No
5)	What order ?	As per final order

4 The Appellate Court also observed that the plaintiff proved his possession of the suit property and dismissed the appeal preferred by the defendant. Being aggrieved by the said decree passed by the appellate court, the defendant filed the present Second Appeal.

5 The learned counsel for the defendant submits that both the courts below erred in coming to the conclusion that the plaintiff proved his ownership of the suit property. He further submits that earlier their

father was member of the said Society and thereafter, said certificate was transferred in the name of the plaintiff. Hence, the defendant also have share in the suit property. Therefore, both the courts erred in passing order of injunction restraining the defendant as well as co-owner of the suit property from entering the same. On the basis of these facts, the learned counsel for the defendant submits that though there is concurrent finding of fact recorded by both the courts below, same are required to be set aside.

6 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Second Appeal. He submits that there is concurrent finding of fact recorded by both the courts on the basis of documents placed on record and hence, there is no question of entertaining the present Second Appeal.

7 I have heard both the sides. Advocate for the appellant defendant filed additional compilation of documents including deposition of parties.

8 It is to be noted that in the present proceeding, plaintiff filed suit for perpetual injunction restraining the defendant from interfering with his possession in respect of the suit property on the basis of his possession being a member of the Co-op.Society. Defendant has not placed on record any documentary evidence to show that his name was also recorded in the Society as a Member.

9 The Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second

Appeal can interfere with the concurrent findings of facts only if substantial question of law arises in the appeal.

10 Considering the concurrent finding of fact recorded by both the courts below and the law laid down by the Apex Court, I do not find any substance in the present Second Appeal. Hence, same stands rejected.

11 In view thereof, nothing survives in the Civil Application. Same stands rejected as infructuous.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.