

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.507 OF 2015

(Mohanlal B. Pardeshi Vs. Kalidas B. Wadekar)

WITH

SECOND APPEAL NO.634 OF 2012

(Kalidas B. Wadekar Vs. Mohanlal B. Pardeshi)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri S.N. Chandrachud, Advocate for Applicant (In S.A. No.507/15).
Shri Dilip Bodake, Advocate for Respondent (In S.A. No.507/12).
Shri Dilip Bodake, Advocate for Applicant (In S.A. No.634/12).
Shri S.N. Chandrachud, Advocate for Respondent (In S.A. No.634/12).

CORAM: R.K. DESHPANDE, J.

DATE: 15th JULY, 2015.

The trial court dismissed Regular Civil Suit No.06 of 2002 filed by the appellant in Second Appeal No.507 of 2015 for grant of simpliciter permanent injunction from obstructing the possession of the plaintiff over the suit property. In the said suit, the defendant also filed a counter claim for a decree, restraining the original plaintiff from interfering or obstructing his possession over the suit property. The trial court vide its judgment and order dated 17.02.2007 dismissed the suit and passed a decree in the counter claim in favour of the original defendant. The plaintiff is restrained from obstructing the possession of the defendant over the suit property. Civil Appeal No.245 of 2007 filed by the plaintiff was dismissed by the Appellate Court on 20.12.2011. Hence, the original plaintiff in this second appeal.

Both the courts below have recorded the finding of fact that the plaintiff has established his possession over

the suit property, the decree for injunction in as suit has therefore, been refused and the suit is dismissed. The finding of fact is based on the evidence available on record and at any possible view of the matter, which does not give rise substantial question of law. The Second Appeal is dismissed.

Needless to say that it shall be open for the appellant to file suit based on title and to claim recovery of possession in accordance with law.

Second Appeal No.634/2012:

The trial court passed a decree of permanent injunction and the counter claim filed in Regular Civil Suit No.06 of 2002 restraining the plaintiff from disturbing the possession of the defendant over the suit property. This is set aside by the Lower Appellate Court in Civil Appeal No.245 of 2007 decided on 20.12.2001. Both the courts are concurrently holding that the appellant in Second Appeal No.634 of 2012 is in possession of the suit property. The Appellate Court however, reversed the decree passed by the trial court only on the ground that the possession of the appellant – original defendant is found to be not legal. Undisputedly, neither the suit nor the counter claim was in respect of title over the suit property and the Lower Appellate Court therefore, *prima facie* could not have reversed the decree passed by the trial court.

In view of above, **admit** on the following substantial question of law.

“Whether the Lower Appellate Court was right in reversing the decree passed by the trial court in a counter claim on the ground that the possession of

the appellant original defendant is not found to be incorrect?

The learned counsel for the respondent waives service of notice.

Civil Application No.1205 of 2012:

This Court has already framed substantial question of law. Both the courts below have found concurrently that the appellant original defendant has established his possession over the suit property. In view of this, there shall be interim relief in terms of prayer clause (a) of the application, which shall continue to operate pending the decision of the appeal.

The civil application stands disposed of.

JUDGE