

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.8 OF 2014
WITH
CIVIL APPLICATION NO.1512 OF 2013
IN
SECOND APPEAL NO.8 OF 2014**

SANJAY ATMARAM YADAV & ANR.)...APPELLANTS

V/s.

**VITTHAL NARHARI KAKADE (deceased))
Through Legal Representatives)
MRS.DWARKABAI VITTHAL KAKADE &ORS.)...RESPONDENTS**

Mr.Surel S. Shah, Advocate for the Appellant.

Mr.Imtiyaz Ahmed Khairdi, Advocate for Respondent Nos.1 & 3.

Coram: Smt.R.P.SondurBaldota, J.

Date : 5th January, 2015.

P.C. :

1 The appellants are the original defendants to Regular Civil Suit No.529 of 1994. They had filed counterclaim in the suit for an injunction to restrain the original plaintiff, from disturbing

their possession of the suit property. The suit of the respondents was dismissed for default. Thereupon, the counterclaim of the appellants proceeded for hearing and the trial court by its order dated 25th January, 2006, dismissed the counterclaim. The appellants had unsuccessfully preferred an appeal to the District court. By its order dated 23rd July, 2012, the District court dismissed the appeal.

2 The grounds for dismissal of the counterclaim as well as the appeal were that the appellants had failed to establish their right to the suit property by producing documents of title. Mr. Shah, the learned advocate appearing for the appellants, does not dispute that the appellants were unable to produce documents of title before the courts below. He, however, submits that the respondent – the original plaintiff, had admitted in his pleadings that he is the tenant of the father of the appellants, and argues that in view of this admission, the courts below ought to have allowed the counterclaim and the appeal. There cannot be any substance in the argument advanced. It was necessary for the

appellants to establish their title to the suit property by producing proper evidence. There is also no substantive question of law arising in the appeal. Hence, the second appeal is dismissed.

In view of the dismissal of the second appeal, Civil Application No.1512 of 2013 does not survive, and is accordingly disposed off.

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