

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

SECOND APPEAL NO.794 OF 2012

Paras Dnyanu Thorat & Anr. ... Appellants

V/s.

Rajaram Dnyanu Veer
(Since deceased through LR's)
1A. Mansing Rajaram Veer & Ors. ... Respondents

.....

Mr. Jaydeep Deo, Advocate for the Appellants.
Mr. P. J. Pawar, Advocate for the Respondents.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 28, 2015.

P.C.

The trial Court dismissed the Regular Civil Suit No.125 of 1996 on 14th October, 2005, for grant of an injunction restraining the defendants from interfering with the possession of the plaintiff over the 9 R of land in survey no.265/2. The Appellate Court has allowed the Regular Civil Appeal No.101 of 2005, by its judgment and order dated 16th March, 2012. The suit filed by the plaintiff is decreed and the operative portion of the order passed by the Lower Appellate Court is reproduced below:

“ Appeal is hereby allowed and the impugned judgment and decree of the trial court in Reg. Civil Suit No.125/1996 is hereby set aside.

Reg. Civil Suit No.125/1996 is hereby decreed with costs and defendants are prevented from disturbing possession of the plaintiff over the suit property unless he is evicted from in due process of law.

Decree be drawn accordingly.

Inform Ld. trial court accordingly.”

2 Undisputedly, the appellant has filed Regular Civil Suit No.188 of 2003, for partition and separate possession in respect of 15 R of land out of survey no.265/2, which is jointly owned by the appellant and the respondents. Hence, the decree passed by the Lower Appellate Court in this case can be made subject to the result of Regular Civil Appeal No.151 of 2004, pending before the Lower Appellate Court in respect of partition and separate possession.

3 The Second Appeal can be disposed of as under:-

- (i) The appellant - defendant is found to be in possession of 6 R of land which fact is not disputed by the plaintiff. The Lower Appellate Court has recorded the finding that the plaintiff is in possession of 9 R of land, the finding of fact recorded by the Lower Appellate Court does not give rise to any substantial question of law;
- (ii) The appellant - defendant shall not disturb the possession of the plaintiff over 9 R of land whereas the respondent - plaintiff shall not disturb the possession of the appellant - defendant over 6 R of land;
- (iii) The Lower Appellate Court is directed to decide the Regular Civil Appeal No.151 of 2004, within a period of six months from the date of first appearance of the parties before it;
- (iv) The parties to appear before the Lower Appellate Court on 17th August, 2015;

- (v) This order shall be subject to result of the said Appeal.

JUDGE