

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

**SECOND APPEAL NO.465 OF 2014
ALONGWITH
CIVIL APPLICATION NO.1071 OF 2014**

Shri. Keshav Rangnath Pote & Anr. Appellants

Vs.

Shri. Savkar Bhika Pote (since deceased) Respondents
through LRs and Anr.

Mr. P.M. Arjunwadkar, Advocate for the Appellants.
Mr. Tushar Jadhav, Advocate for respondents no. 2 and 3.

Coram : Smt. R.P. SondurBaldota, J.
Date : 7th January, 2015.

P.C.

1 This appeal is directed against the judgment and order dtd.28th April, 2014, by which the lower appellate court allowed the appeal preferred by the respondents and decreed the suit.

2 The brief statement of facts leading to the present appeal is as follows :

The respondent filed suit for declaration that the property i.e. land at gat no.843 is owned by them and that the appellants do not

have any right thereto. The respondents also sought mandatory injunction against the appellants to demolish the two houses unauthorisedly constructed by them on the suit property being House Nos.1319 and 1320 and handover possession of the land under the structures. The appellants in their written statement do not dispute construction of the two houses by them on gat No.843. They deny title of the respondents to the suit property and claim that the two houses have been in existence for the last about 40 years. Another objection taken by the appellants to the suit was that, it was bad for non-joinder of necessary parties. The trial court by its judgment and order dtd.28th November, 2007 dismissed the suit holding that the suit was bad for non-joinder of necessary parties. As regards the claim of the respondents of title to the suit property and allegation that the appellants had encroached upon the suit property by constructing two houses thereon, the same was accepted by the trial court. Being aggrieved by the decision of the trial court, the respondents approached the lower appellate court by filing Regular Civil Appeal No.65 of 2008. The lower appellate court allowed the appeal and decreed the suit.

3 The contention as regards non-joinder of necessary parties taken by appellant was that after the death of the original plaintiff, two of his heirs i.e. the married daughters had not been brought on record and in their absence the suit was bad for non-joinder of necessary parties. The lower appellate court at paragraph 18 of the impugned

judgment and decree has held that the heirs brought on record were the sons of the deceased-plaintiff and they being the co- owners of the suit property could maintain the suit for possession against the trespasser. The learned Judge relied upon decision of the Apex Court in A. Vishwanath Pillai and others vs. Special Tahsildar for Land Acquisition No.IV and others, reported in A.I.R. 1991, Supreme Court, page 1966 in support of the reasoning. The view taken by the lower appellate court is the correct view. No substantial question of law arises for consideration of this court. Hence, the Second Appeal is dismissed.

4 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

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