

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.516 OF 2010
WITH
CIVIL APPLICATION NO.1183 OF 2010

Shri. Babu Babaso Jamadar & Anr. Appellants

Vs.

Shri. Shirgonda Anna Patil & Anr. Respondents

Mr. N.V. Walawalkar, Senior Counsel i/by Mr. P.M. Arjunwadkar,
Advocate for the Appellants.

Mr. P.K. Dhakephalkar, Senior Counsel i/by Mr. Kedar Patil, for
the respondents 1 & 2.

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

Date : 4th February, 2015

P.C.

1 The appellants are the original plaintiffs, who had filed Regular Civil Suit No.294 of 1998 for injunction simplicitor to restrain the respondents from disturbing their possession of the suit property and for mandatory order directing the respondents to remove a shed constructed by them on a portion of the suit property. The trial court had decreed the suit by the judgment and decree dtd. 15th December, 2009. Being aggrieved

by the judgment and decree, the respondents preferred Regular Civil Appeal No.3 of 2010 in the District Court, which was allowed and the decree of the trial court came to be set aside. Being aggrieved by that order, the appellants have approached this court by way of Second Appeal.

2 The appellants reply upon registered sale-deed dtd. 28th July, 1997, by which they purchased the suit property from one Lalita Mohan Khandekar and Sau. Parubai Dinkar Kamble being heirs and legal representatives of Deu. The respondents claim to be in occupation of the suit property, pursuant to the registered agreement of sale dtd. 21st June, 1976 executed in their favour by Deu, along with his two brothers Bhau and Balu. The original owner of the suit property was one Bhanu, the father of the three brothers. It is the claim of the respondents that they had been put in possession of the suit property after registration of the agreement of sale and they have since been cultivating the land without any obstruction. Consequently, the appellants could not have been sold and handed over possession of the suit property by the heirs of one vendors of the respondents, 20 years after, the agreement in favour of the respondents and handing over of possession to them.

3 Mr. Walawalkar, the learned advocate appearing for the appellants submits that the agreement for sale in favour of the respondents, though registered can, at the highest, be used by the respondents for protection of the possession by resorting to Section 53-A of the Transfer of Property Act. However, for that purpose, according to him, it was necessary for the respondents to establish that they are ready and willing to perform their part of the contract. He points out that the respondents till date have not filed any suit for specific performance of the agreement in their favour.

4 In their suit, the appellants sought two reliefs. First was a preventive relief to restrain the respondents from disturbing their possession of the suit property. The second was a mandatory relief directing the respondents to remove their structure. The basis of both the reliefs is the claim of the appellants of being in possession of the suit property. Therefore, the lower appellate court has observed that the primary fact to be established in the suit was actual possession of the suit property. On the basis of the evidence brought before the Court, the lower appellate court has held that it is the respondents who are cultivating the suit land, taking the crop therefrom of sugar-cane and have also supplied that sugar-cane to the factories. Thus the respondents are in possession of the suit property.

5 The view taken by the lower appellate court is a probable view on the basis of the evidence brought for the purpose before the court. That view cannot be disturbed unless the same is shown to be a view taken either without any material on record or contrary to the material on record or without taking some material into consideration. No such contention has been taken by the appellants. It is the claim and evidence of the respondents that they have been taking the crop of sugar-cane from the suit property. They produced documents establishing utilisation of water for sugar-studs, supply of sugar-cane grown at the suit property to Deshbhakta Ratanappa Kumbhar Panchganga Sahakari Sakhar Karkhana. The appellate court has correctly appreciated the evidence to find that the possession of the suit property is with the respondents.

6 Thus there is no substance in the challenge to the impugned order. There is no substantial question of law arising for consideration of this court. Hence, the appeal is dismissed.

7 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.)