

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.923 OF 2012
WITH
CIVIL APPLICATION NO.1875 OF 2012
IN
SECOND APPEAL NO.923 OF 2012**

**MAHADU GOJABA SHINDE (since deceased)
Through Legal heirs)
SMT.MUKTABAI SHINDE AND ORS.)...APPELLANTS**

V/s.

ANKUSH VAMAN CHAVAN AND ORS.)...RESPONDENTS

Mr.S.G.Surana, Advocate for the Appellants.

Mr.P.J.Thorat, Advocate for the Respondents.

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

Date : 5th January, 2015.

P.C. :

1 The appellants in the second appeal are the original defendant nos.1(a) to 1(g), being heirs of the original defendant no.1. Respondent no.1 filed suit for declaration of title to the suit

property contending that the same belongs jointly to him and respondent nos.2 and 3. It was further alleged that the original defendant no.1, the predecessor of the appellants herein, was disturbing their possession by obstructing the cultivation of the land and by felling the tree standing on the suit land. During the pendency of the suit, original defendant no.1 died and the appellants were brought on record. The trial court by its judgment and decree dated 9th February, 2012, partly decreed the suit granting relief of declaration to the respondents and refused the relief of injunction on the ground that the allegations contained in the plaint of obstruction to possession were personally against original defendant no.1 and on the death of original defendant no.1, cause of action in that regard did not survive. The appellants carried the judgment and decree to the District court by way of Regular Civil Appeal. Respondent no.1 had also preferred Cross Objections as he had been refused the relief of injunction. The Appellate court dismissed the appeal as well as the cross objections by the order dated 20th June, 2012.

2 The findings of the courts below are completely supported by the evidence on record. Infact, original defendant no.1, in the pleadings, had not disputed the title of the respondents to the suit land. Also, there is no substantive question of law arising for consideration of the court. Hence, the second appeal is dismissed.

 In view of the dismissal of the second appeal, Civil Application No.1875 of 2012 does not survive and is accordingly disposed off.

(Smt.R.PSondurBaldota, J.)