

Sequeira

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

***SECOND APPEAL NO. 436 OF 2016
Along with
CIVIL APPLICATION NO. 369 OF 2016***

Shri Ravindranath Ramdev Tiwari & anr. ... Appellants /

V/s.

Mr.Yashwant Narayan Patil. ... Respondent.

Mr.Vaibhav Ugle, for Appellants / Applicants.

Mr.S.V.Palsuledesai, for the Respondent.

***Coram : N.M. Jamdar, J.
Tuesday 28 June, 2016.***

P.C. :-

The Appellants challenge the Judgment and Order passed by the learned District Judge, Kalyan allowing the Appeal filed by the Respondents, setting aside the Judgment and Decree passed by the learned Civil Judge, Junior Division Kalyan.

2. The Appellants-original Plaintiffs filed Regular Civil Suit No.334 of 2009 in the Court of Civil Judge, Junior Division Kalyan, for injunction simplicitor against the Respondent. The learned Civil Judge relying primarily on the revenue record granted decree of

injunction in favour of the Appellants. The Respondent filed an Appeal before the District Judge Kalyan. The learned District Judge, allowed the Appeal. Hence the Second Appeal.

3. Heard learned counsel for the parties.

4. The learned counsel for the Appellants submitted that the learned District Judge has not considered the position of the revenue record and the fact that in absence of any challenge to mutation entry, the entires have become final. He submitted that based on this entry the decree for injunction was rightly granted by the learned Civil Judge.

5. Whether the Appellants are in possession of the suit property is a question of fact. As far as the revenue entries are concerned the learned District Judge found that the order passed in the consolidation proceedings is to the contrary and the learned District Judge has given weightage to the position under the consolidation scheme, which is undertaken under the provisions of a statute. The learned District Judge has accordingly weighed the comparative merit of pieces of evidence and has given more weightage to the position under the statutory consolidation scheme than a revenue record. The assessment of evidence is within the domain of the learned District Judge. Merely because another view is possible by appreciating the evidence again, will not lead to any question of law.

The Appellants have not produced any documentary evidence to show that the Appellants were in possession of the property. In the circumstances, no perversity can be found, in the decision of the learned District Judge allowing the Appeal. No substantial question of law arises. The Second Appeal is accordingly dismissed.

6. The Civil Application stands disposed of.

(N.M. Jamdar, J.)