

JPP

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

SECOND APPEAL NO. 740 OF 2013

Vilas Jayawant Khanvilkar and Ors. ... Appellants.

V/s.

Anandibai Purshottam Manjarekar
(Deceased) through her legal Heirs
1 (A) Vinita Sharadchandra Padawal & Ors. ... Respondents.

Mr. Satish Raut for the Appellants.
Mr. Aniket Ranade for Respondent 1 (A) to 1 (G) and 2.

CORAM : N.M. Jamdar, J.

06 May, 2016.

P.C. :-

The Appellants challenge the concurrent judgments and orders passed by the Civil Judge, Junior Division, Rajapur and the District Judge, Ratnagiri, decreeing the suit of the Respondents and dismissing the Appeal of the Appellants. The Suit was filed by the Respondents for permanent injunction in respect of the suit property, which has been decreed.

2. The learned Counsel for the Appellant submitted that both the Court have not considered the effect of dismissal of the earlier suit filed by the Respondents for injunction. He submitted that the only

change that has been made is the house property is excluded and since earlier Suit is dismissed, the Respondent could not have sought injunction. He submitted that nothing is shown by the Respondents that pursuant to the sale deed possession has come to the Respondents. The learned Counsel for the Respondents supported the impugned orders.

3. In the earlier Suit bearing No. 25 of 1984, the learned Civil Judge, Rajapur categorically held that the Respondents are in possession of the suit property, excluding the 5 gunthas under the house. The suit for injunction thereafter was dismissed on the ground that mere apprehension in the mind of the Respondents is not sufficient for grant of injunction. The present Suit thereafter has been filed, excluding the house. In view thereof, there cannot be any res-judicata in respect of the present Suit which excludes the house property and the land below it. The dismissal of the earlier suit was not on the ground that the Respondents had failed to prove their ownership and possession over the Suit property. The submission made by the learned Counsel for the Appellants therefore cannot be accepted.

4. As regard the contention regarding possession, both the Courts have concurrently held that the Respondents – Plaintiffs are in possession. The Respondents have produced registered sale deeds and consequent entries in the revenue records. The Appellants have not produced any cogent evidence to show their possession. The theory of adverse possession has rightly been rejected as the Appellants have denied the ownership of the Respondents.

4. In the circumstances, there is no error in the decisions of both the Courts. No question of law arises. The Second Appeal is accordingly dismissed.

(N.M. Jamdar, J.)