

JPP

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

*SECOND APPEAL NO. 270 OF 2016
with
CIVIL APPLICATION NO. 514 OF 2016*

Mr. Ravindra Vinayak Mundale. ... Appellant.

V/s.

Dattatraya alias Mahadeo Krishnaji Dhabholkar
through his power of attorney holder
Suresh Krishnaji Dabholkar. ... Respondent.

Mr. Kalpesh Patil i/b. Paras Yadav and Sachin Londhe for the Appellant.

CORAM : N.M. Jamdar, J.

13 June, 2016.

Oral Order :-

The Appellant challenges concurrent Judgments and Orders passed by the Civil Judge, Junior Division, Vengurla dated 10 April 2013 and the District Judge, Sindhudurg dated 30 November 2015, decreeing the Suit filed by the Respondent for injunction and dismissing the Appeal. Both the Courts after taking into consideration the revenue record, deposition of the witnesses and such other relevant material rendered a finding of fact that the Respondent – Plaintiff is in possession of the suit property and that the Appellant was intending to cut the

mango trees as well as cause disturbance to the possession of the Respondent.

2. The learned Counsel for the Appellant submitted that the suit for possession filed by the Respondent is pending and this fact has not been considered by both the Courts. Whether the property specified in the earlier suit is the same property involved in this Appeal and what were the circumstances in which the earlier suit was filed are factual aspects which ought to have been urged before the Courts below. After the learned Civil Judge decreed the suit against the Appellant, the Appellant could have taken up this point before the Appellate Court which is not taken in the Appeal Memo as well as not urged before the learned District Court. The predecessor of the Appellant admitted that he has no concern with the suit property except house no. 207 and he was occupying the premises as a tenant. The proceedings before the tenancy authorities have gone against the Appellant and even this Court has disposed of the challenge of the Appellant. Both the Courts considered these proceedings and came to the conclusion that the Appellant was not in possession.

3. The learned Counsel for the Appellant then sought to argue that the agreement entered into by the Respondent – Plaintiff in respect of one Iliyas is suspicious. The Appellate Court has dealt with this factual issue and as rendered a finding against the Appellant. The Respondent – Plaintiff has produced on record the revenue extract from the year 1960-2009 which show name of the Respondent in the revenue record. The

Respondent also led oral evidence to show that the Respondent is in possession. The Appellant has failed to produce any such documentary evidence only the above argument in respect of the suit filed by the Respondent, which point as stated earlier, has not been urged before the Courts below. Keeping in mind the limited jurisdiction under Section 100 of the Code of Civil Procedure, it is not possible to interfere with concurrent findings recorded by both the Courts. The Second Appeal does not involve any question of law. The arguments advanced are regarding the factual position.

4. The Second Appeal is dismissed. Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)