

Sequeira

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

SECOND APPEAL NO. 670 OF 2013

Sou.Pushpavati Deokumar Patil

Since deceased through LR's

a. Dr.Satyandhar Deokumar Patil & ors. .. Appellants

Versus

Appu Parisa Bhokare

Since deceased through LR's

a. Bapu Appu Bhokare

Since deceased through LR's

i. Mangal Bapu Bhokare & ors. .. Respondents

Mr.S.R.Ganbavale, for Appellants.

Mr.Sanjay Patil, for Respondents.

**CORAM: N.M. JAMDAR, J.
Friday, 18 March 2016.**

PC. :

By this Appeal, the Appellant challenges the Judgment and Decree passed by the learned District Judge, Kolhapur dated 10 November 2011 in Regular Civil Appeal No.347 of 2000 allowing the Appeal and setting aside the Judgment and Decree in Regular Civil Suit No.98 of 1987 passed by the Civil Judge, Junior Division, Peth Vadgaon, Kolhapur, on 7 August 2000.

2. The Appellant filed Suit No.98 of 1987 in the Court of Civil Judge, Junior Division, Vadgaon for perpetual injunction against

the Respondents. Subject matter of the suit property is an open space. It is the case of the Appellant that the property was originally owned by one Parisa Tavanappa Bhokare which was inherited by Anna Parisa Bhokare, who in turn sold the property to the Appellant by Sale deed dated 26 June 1971. According to the Appellant, the said property was leased by the Appellant to Veterinary authority for tying the animals. Since the Respondents approached the veterinary authorities with a complaint that they had illegally constructed structures on the said land, the Plaintiff filed a suit for injunction. The learned Civil Judge Junior Division, Vadgaon decreed the suit by its order dated 7 August 2000 and the learned District Judge, Kolhapur has reversed the Judgment and Decree by the impugned order.

3. I have heard the learned counsel for the parties. It appears that the dispute centres around the identity of Anna Parisa. It has come on record that there are two persons by the same name in the village. It appears that Anna Parisa filed an application before the authorities stating that his name was wrongly recorded and accordingly his name was deleted from the suit property. Since the Appellant was basing his right on the unregistered Sale deed executed by Anna Parisa, it was incumbent upon the Appellant to establish that his vendor had title to the property. Defendant No.3 i.e. Anna Parisa had filed an affidavit that he does not have title to the property. He has been joined as a Defendant and has been cross-examined. Nowhere in the cross-examination it has come up that said Anna had a title to the property which he could convey to

the Appellant.

4. It is the case of the Appellant that another Anna Parisa, was the true vendor of the property and he has supported his case by filing an affidavit. However, mere filing of affidavit will not be enough as he was not called as a witness. More appropriately, he ought to have been joined as a party Defendant. Appellant atleast could have called him as a witness so that he could have been cross-examined and it could have been established that Anna Parisa had title to the suit property. Therefore, in absence of this material being on record, the inquiry was restricted. On this basis the appellate Court considered the material on record and has concluded that the Defendant No.3 Anna did not have title to pass on to the Appellant and therefore, this suit based on such deed was rightly dismissed.

5. The learned counsel for the Appellant sought to urge various questions regarding the identity of Anna, but none of these arguments will lead to any substantial question of law, as they are all as regards the factual aspects of the case. In the circumstances, no substantial question of law arises. The Second Appeal is accordingly dismissed.

(*N.M. JAMDAR, J.*)