

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

**SECOND APPEAL NO.774 OF 2012
ALONG WITH
CIVIL APPLICATION NO.1472 OF 2012**

Haribhau Atmaram Parulekar & Anr. .. Appellants
Vs.
Ramchandra Yashwant Sawant .. Respondent

Mr.G.J. Sabnis for Appellants.
None for Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 10th October 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and order dated 4th January 2012 passed by the learned Principal District Judge, Sindhudurg-Oros dismissing the Regular Civil Appeal No.150 of 2005 filed by the appellants. In the said appeal, the appellants had impugned the judgment and decree dated 5th July 2005 passed by the Joint Civil Judge, Junior Division, Sawantwadi thereby decreeing the suit filed by the respondent (original plaintiff) inter alia praying for an injunction.

2. The original plaintiff filed a suit against the defendants in respect of the suit property i.e. Survey No.98, Hissa No.2 situated within the limits of village Banda, Taluka Sawantwadi, Dist.Sindhudurg. It was the case of the plaintiff that the suit property was exclusively owned by the plaintiff and he had planted 130 coconut trees and 200 betel-nut trees in the suit land. The defendants had their land adjacent to the suit

property of the plaintiff. The plaintiff got the suit property surveyed through T.I.L.R. The defendants, however, started obstructing the plaintiff. On 2nd August 1997, the plaintiff was erecting a fencing. The defendants destroyed the fencing erected by the plaintiff and threatened the plaintiff to take possession of the suit property. Thus the plaintiff had filed a suit for injunction. The suit was resisted by the defendants by filing written statement.

3. Learned trial Judge framed six issues. Both the parties led oral and documentary evidence before the learned trial Judge. The learned trial Judge after considering the oral as well as the documentary evidence and pleadings filed by the parties, rendered a finding that the plaintiff had proved that he was the owner and having legal possession over the suit property and was entitled for injunction as prayed. The defendants had failed to prove that they were having possession over the suit property and they became owners as per the principle of adverse possession.

4. The judgment and decree of the learned trial Judge dated 5th July 2005 was impugned by the original defendants before the learned Principal District Judge by filing Regular Civil Appeal No.150 of 2005. The first appellate Court rendered a judgment and decree on 4th January 2012 and dismissed the Regular Civil Appeal No.150 of 2005. The first appellate Court formulated three points for determination. The first appellate Court independently considered the oral and documentary evidence led by both the parties and held that the plaintiff had established his lawful possession over the suit property and that the defendants had not obstructed the plaintiff.

5. Mr.Sabnis, learned counsel appearing for the appellants (original defendants) submits that merely because the defendant no.1 was not examined by the plaintiff as a witness to prove that the defendants had not obstructed the plaintiff and were in possession of the suit property, the learned trial Judge could not have disbelieved the averments made by the defendants in the written statement.

6. The appellants (original defendants) not having examined the Court Commissioner to prove their case, the allegations made in the written statement on the issue of possession remained unsubstantiated. In my view, the findings rendered are concurrent findings and being not perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908

7. In my view, there is no substantial question of law arises in this appeal. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.