

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

SECOND APPEAL NO. 748 OF 2015

Smt.Yesabai Ganapati Powar
(since deceased, through legal heirs & Lrs.)
1 A. Pandurang Ganpati Power & ors.
R/o. Wadanage, Tal. Karvir, Dist.Kolhapur. ... Appellants
v/s
Dinkar Bhau Powar,
R/o. Wadanage, Tal. Karvir, Dist. Kolhapur. ... Respondent

Mr.Dushyant Purekar for the appellants.
Mr.V.B.Rajure for respondent No.1.

Coram: N.M. Jamdar, J.
Dated: 21 June 2016

P.C.:

The suit was filed by the Appellant for the relief of injunction against the Respondent restraining him from disturbing the possession and subsequently by amending the plaint, relief of possession was sought. The suit was dismissed by the learned Civil Judge, Junior Division, Kolhapur, on 29 November 1999. The appeal filed by the Appellant was dismissed by the learned District Judge on 30 November 2013.

2 The claim of the Appellant for injunction was based on an assertion that the Appellant is a tenant of a Trust. As regard this claim is concerned, both the Courts have rightly held that the Trust

was not joined as a party-Respondent. No documentary evidence was shown, such as, lease deed in favour of the Appellant. Therefore, both the Courts have rightly negated the claim of the Appellant on this count.

3 As regard the relief of possession, it is the case of the Appellant that the Appellant was dispossessed some time in September-October 1996 without due process and, therefore, it is required that the Appellant be put back in possession. Learned counsel for the Appellant submitted that both the Courts have not considered the documentary evidence on record which demonstrate possession of the Appellant. Learned counsel for the Respondent pointed out that the Appellant has given various admissions, such as, neither his nor his predecessors' name appear in the cultivation column from the year 1971 and no attempts were made. The Respondent also admitted that the land was not accepted on lease from the Trust. These clear admissions have been relied upon by both the Courts to come to the conclusion that the Appellant was not in possession and, therefore, there was no question of dispossession.

4 No substantial question of law arises. The second appeal is accordingly dismissed.

(N. M. Jamdar, J.)