

Sequeira

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

**SECOND APPEAL NO. 820 OF 2015
Along with
CIVIL APPLICATION NO. 1733 OF 2015**

Shri Abdul Majjid Attar (D/H)

1/1 Smt.Jarina Abdulmajjid Attar

(Deleted as already on record as Def.3)

1/2 Shri Faiyaj Abdulmajjid Attar & ors.

.. Appellants

Versus.

Shri Mahammadgaus Amirhamja Shaikh

Deceased through legal heirs

1/1 Smt.Shaminabanu Mahammadgaus

Shaikh & ors.

.. Respondents

Mr.P.D.Pise, for Appellant and Applicant.

None for Respondent.

**CORAM: N.M. JAMDAR, J.
Wednesday, 23 March 2016.**

PC. :

The Appellants challenge the orders passed by the District Judge Sangli and the Judgment and Decree passed by Civil Judge Junior Division, Miraj, District Sangli in Regular Civil Suit No.354 of 2008 dismissing the Appeal filed by the Appellant challenging the Judgment and Decree passed by the Civil Judge J.D., Miraj on 6 September 2008 in Regular Civil Suit No.17 of 2004.

2. The Appellants filed a Civil Suit seeking relief of perpetual injunction against the Respondents / original Defendants. According to the Appellants, one Kapshikar was running a bakery

business. Subsequently, the said Kapshikar gave property to Defendant No.1 Mahammadgaus Amirhamja Shaikh who in turn executed an agreement in favour of the Appellant Abdul Majid Attar. It was the contention of the Appellants that the Defendants were obstructing his possession. Both the Courts framed issue as regards the lawful possession of the Appellants and came to the conclusion that the Appellant's reliance on agreement dated 15 April 1987 executed by Mohammad Samir Khan and Kamruddin Khan was not correct and had no rights accrued in favour of the Appellants, through this agreement which was unregistered. Both the Courts also took note of the fact that Defendant No.1 was lawfully in process of taking possession of the suit property through execution proceedings in R.D.No.53 of 1996. Both the Courts therefore, rightly held that on the basis of an agreement which confers no rights in favour of the Appellant, the Appellants could not seek an injunction against the Defendant No.1 who was executing the decree obtained by the Defendant No.1 through competent Court.

3. The view taken by both the Courts in assessing the evidence and coming to a conclusion that the Appellants were not in lawful possession and therefore not entitled to injunction cannot be faulted. No substantial question of law arises. The Appeal is accordingly dismissed. The Civil Application also does not survive.

(N.M. JAMDAR, J.)