

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

SECOND APPEAL NO. 461 OF 2014

Prakash Hari Patil ... Appellant
Vs
Smt. Dagdubai Hari Patil ... Respondent

...
Mr. Sanjeev Kadam for the Appellant and Applicant.
None for the Respondent.

CORAM : N. M. Jamdar, J.
DATE : 20 APRIL, 2016

P.C. :

1 The appellant challenges the order passed by the Junior Division, Islampur, partly decreeing the suit filed by the respondent and the judgment and order passed by the learned District Judge, Islampur, dismissing the appeal filed by the appellant.

2 The respondent is the step-mother of the appellant. The respondent filed a suit bearing RCS No. 196 of 1994 for share in the property and for injunction. The learned Civil judge held that the respondent was the second wife of the father of the appellant and she was not entitled to any share in the property. However, the learned Civil Judge proceeded to grant an injunction against the appellant not to dispossess the respondent without

following the due process of law. This order is confirmed in appeal by the learned District Judge. The learned counsel for the appellant submitted that having once come to the conclusion that the respondent was not having any right in the property and not entitled to any share, no order qua her joint possession as has been passed by the learned Civil Judge, could have been passed. He submitted that the appellant has made a categorical statement that the appellant was ready to provide maintenance to the respondent. He submitted that in absence of proving the title no order of injunction can be passed which, according to the learned counsel, is the question of law that arises in this appeal.

3 The respondent, who is the step-mother of the appellant, is a widow and issue-less. She is now around 70 years old. What both courts have done is to pass the order that she should not be dispossessed without following due process of law, otherwise, she would be thrown on the road. As regard the question raised by the learned counsel for the appellant the learned District Judge has relied upon the decision of the Apex Court in **LALLU YESHWANT SINGH Vs. RAO JAGDISH SINGH, AIR 1968 SC 620** to hold that even if the respondent did not prove her title she had proved her long possession being in joint possession of the

property as a step-mother of the appellant. Therefore, it is not a position of law that if title is not proved, the long standing possession can be simply be ignored and no protective order to be passed. In the circumstances which have been narrated about the question of law as raised by the learned counsel for the appellant does not arise for consideration.

4 The appeal is accordingly dismissed. Civil Application disposed of.

(N. M. Jamdar, J.)