

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

***SECOND APPEAL NO. 349 OF 2014
ALONG WITH
CIVIL APPLICATION NO. 1620 OF 2013***

Smt. Vithabai Dattu Kalan & ors. ... Appellants/Applicants

v/s

Shri Shashikant Maruti Sabale & ors. ... Respondents

Mr.S.V.Palsule Desai for the appellants/applicants.

Mr.Rajesh Datar along with Dushyant Pagare for Resp. Nos.1, 3 & 4.

Mr.Rajiv Deokar for Resp. Nos.2 and 5.

Coram: N.M. Jamdar, J.

Dated: 13 July, 2016

ORAL ORDER:

The Appellants challenge the concurrent judgments and orders passed by the Civil Judge, Junior Division, Kalyan, and the District Judge, Kalyan, wherein the suit filed by the Appellants for declaration of ownership and grant of injunction was dismissed, so also the appeal filed by the Appellants.

2 Heard learned counsel for the parties.

3 The suit was filed for declaration of ownership and grant of permanent injunction against the Respondents.

4 As regard the issue of title is concerned, both the Courts have concurrently found that the Appellants have not been able to show any evidence that the Appellants are the owners of the property. Learned counsel for the Appellants also have not been able to show any title deed in favour of the Appellant in respect of the property. No error therefore can be found in the decisions on this issue.

5 As regard the grant of injunction is concerned, it will depend on whether the Appellants are in possession. Whether the Appellants are in possession of the property, is primarily a question of fact. Both the Courts have held that there is nothing produced by the Appellants on record to show that the Appellants are in possession of the suit property. Learned counsel for the Appellants have sought to rely on the proceedings arising from entries in revenue record, but this alone will not be sufficient. In the present suit, no cogent material is produced. No oral evidence of the neighbours has been produced, neither any bills, vouchers or such other documentary evidence has been produced. Therefore, for lack of any cogent material to demonstrate the possession of the Appellants, the conclusion drawn by both the Courts on this count also cannot be faulted. No other argument was advanced.

6 No substantial question of law arises.

7 The second appeal is dismissed. The civil application stand disposed of.

(N. M. Jamdar, J.)