IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 606 OF 2013

Ahmadkhan Mahamadkkhan Deshmukh
& Anr. … Appellants
(Orig. Pltffs)

Vs

Dawoodkhan Mahamudkhan Deshmukh
& Anr. ... Respondents
(Orig. Defts)

…

Mr. S. M. Gorwadkar, Senior Advocate i/b. Niranjan A. Mogre for the appellants.
None for the respondents.

CORAM : N. M. Jamdar, J.
DATE : 25 APRIL, 2016

P.C. :

1 The Appellants challenge the concurrent judgment and order passed by the Civil Judge, Junior Division, Mahad, District Raigad, and the judgment and order passed by the District Judge, Mangaon, District – Raigad, dismissing the suit and appeal filed by the Appellant. The Appellants filed a suit bearing No. 17 of 2006 in the court of Civil Judge, Junior Division, Mahad in respect properties at Village Tudil, Taluka Mahad, District Raigad.

2 The case of the Appellants in the plaint was that the suit property is their ancestral property and the respondents who have no rights whatsoever by way of force are trying to interfere with the possession of the Appellants. On this basis the suit for simpliciter

injunction was filed. Both the Courts have negatived the claim of the Appellants.

3 The learned counsel for the Appellants submitted that the part of the property was mortgage in favour of the predecessor of the Appellants and the suit for redemption of mortgage was dismissed and the findings recorded by both the courts that the Respondents have right in the properties are not correct. He submitted that even otherwise in a simpliciter suit for injunction, title was not of any relevance.

4 The submissions advanced cannot be accepted. Both the courts have rightly held that the Appellants in the plaint suppressed that part of the property was mortgaged and that respondents were claiming through the mortgagor. The plaint proceeded on simplistic basis that the suit property is an ancestral property. Both the courts have invoked the principles of equity for grant of relief of injunction that a part party must come to the court with clean hand and should not suppress the material facts. The submission that the factum of a mortgage was not relevant in the present suit, cannot be accepted. The Respondents have claimed right as a mortgagor and they are not total strangers to the property.

5 In the circumstances, the conclusion reached by both the courts that the Appellants are not entitled for any order of injunction in their favour, cannot be disturbed. Both the courts have rightly held that in the circumstance no relief can be granted in the suit for

simplisiter injunction without declaration of any right.

6 No question of law arises. The second appeal is dismissed.

(N. M. Jamdar, J.)