

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

**FIRST APPEAL NO. 423 OF 2016
WITH
CIVIL APPLICATION NO. 3490 OF 2015**

Noorjahan Mustar Shaikh

... Appellant

vs.

Adbul Salim Mustar Shaikh & anr.

... Respondents

Ms. Pratibha Shelke i/by Pradeep J. Thorat, Advocate for the appellant.

Coram : Smt. R. P. SondurBaldota, J.

Date : 30th March, 2016.

P.C.

1. This appeal challenges the order dated 28th April, 2015, by which the suit filed by the appellant against her two sons for perpetual injunction to restrain them from dispossessing her from the suit premises without following due process of law, has been dismissed. The appellant claims to be carrying business of selling milk from the premises with the help of her husband. She claims that the licence for the business stands in her name. She alleges that the respondents, her sons are trying to dispossess her from the suit premises without following due process of law.

2. The appellant did not examine herself in support of her case but examined her husband as her constituted attorney. Further she failed to prove the power of attorney given by her to him. Consequently, the evidence of the husband was treated as evidence of a witness on behalf of the appellant. Even as witness, the evidence of the husband does not support the appellant. It, in fact, falsifies her claim in the suit and his own evidence in examination-in-chief. In the cross-examination, he has admitted in terms that the appellant does not participate in the business run from the suit premises and that the business is run by the respondents. He has also admitted that there is no question of using any force against the appellant since admittedly she has access to the cash box in the suit premises. Even her witness i.e. her husband has an access to the cash counter. Thus, there is no substance, whatsoever, in the appeal. The trial Court has correctly dismissed the suit. The appeal is, therefore, dismissed.

3. In view of dismissal of the appeal, the civil application for interim relief does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]