

Sequeira

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

***SECOND APPEAL NO. 621 OF 2013
Along with
CIVIL APPLICATION NO. 1469 OF 2013***

Shri Bandopant Baburao Patil
(Jadhav) & anr.

... Appellants / Applicants

Vs.

Shri Krishnat Bhagawant Jadhav.

... Respondent

Mr.Rahul Walvekar, for Appellants / Applicants.

Mr.D.V.Sutar, for the Respondent.

***CORAM : N.M.Jamdar, J.
Wednesday, 27 July 2016.***

Oral Order :

The Appellants challenge the concurrent Judgment and Orders passed by Civil Judge Junior Division at Panhala dated 21 December 2001 and District Judge, Kolhapur dated 11 September 2013 dismissing the Suit and the Appeal filed by the Appellants.

2. The Suit was filed for simplicitor perpetual injunction to restrain the Respondent from disturbing the possession of the Appellants over the suit properties. Both the Courts held that the Appellants failed to prove possession over the suit property. By registered Sale deed dated 22 December 1987, the Appellants sold the suit property in favour of the Respondent. In the said Sale deed

there was a clear recital that possession of the property is handed over. In the Suit that was filed there is no declaration that the Sale deed be declared void or a prayer to set aside the Sale deed. In absence of any such prayer, the argument advanced that the suit property will become a fragment has rightly been decided by both the Courts. In view of clear recital in the Sale deed a heavy burden was on the Appellants. Having sold the suit property by a registered Sale deed to the Respondent, the Appellants cannot now seek to retrain the Respondent from enjoying the property which the Respondent legitimately purchased from the Appellants. This being the position the grievance that the Application for additional evidence was not considered by the learned District Judge, cannot be entertained. Even otherwise, at the time of hearing of first Appeal there does not seem to have been any grievance nor it seems to have been brought to the notice of the learned District Judge.

3. The concurrent findings of fact recorded by both the Courts that the Appellants are not in possession of the property cannot be interfered in the limited jurisdiction under Section 100 of the Code of Civil Procedure. No question of law therefore, arises. Arguments advanced are regarding appreciation of evidence. No other point was urged. Second Appeal is dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)