

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

***SECOND APPEAL NO. 800 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 1940 OF 2015***

Shri Balasaheb Mahadeo Parit

... Appellant/Applicant

v/s

Sou. Vimal Shankarrao Mote
(through Power of Attorney)
Jaysing Jagannath Parit & anr.

... Respondents

Mr.Bhooshan Mandlik i/by S.S.Patwardhan for the appellant/
applicant.

Mr.V.S.Gokhale for respondent No.1.

Coram: N.M. Jamdar, J.

Dated: 9 August 2016

ORAL ORDER:

The Appellant challenges the judgment and order passed by the learned District Judge, Islampur, dated 31 December 2014, allowing the appeal and setting aside the judgment and decree passed by the Civil Judge, Junior Division, Islampur, thereby decreeing the suit filed by the Respondent/Plaintiff and restraining the Appellant from disturbing the possession of the Respondent/Plaintiff over the suit land.

2 The Respondent/Plaintiff filed Suit No.55 of 2003 for

injunction and an alternative prayer of possession. The learned Civil Judge, by judgment and order dated 4 May 2013 dismissed the suit. The Respondent/ Plaintiff thereafter filed an appeal bearing No.65 of 2013 and it was allowed by the impugned judgment and order by the learned District Judge.

3 The learned counsel for the Appellant submitted that the Respondent/Plaintiff has not produced any evidence to show that the Respondent/Plaintiff is in possession of the suit property. He submitted that the learned District Judge has erroneously held that the evidence has been produced by the Respondent/Plaintiff to show that the Respondent/Plaintiff was cultivating the land and that the Appellant has admitted the execution of the sale deed and that the Respondent is in possession. He submitted that the sale deed relied upon by the Respondent/Plaintiff, was not duly proved. He also submitted that till the year 2001 the name of the Appellant continued in the records regarding the suit property and no steps were taken by the Respondent/Plaintiff to get the mutation entries changed. He submitted that the learned District Judge has confused between the sale deed executed in favour of one Haribhau Thorat with the sale deed of the said land. The learned counsel for the Respondent/Plaintiff supported the impugned order.

4 I have gone through the decision of the learned District Judge as well as the evidence led by the Appellant. The sale deed was

executed by the father of the Appellant in favour of the Respondent/Plaintiff and not by any stranger. The sale deed is a registered sale deed. On this date, the father of the Appellant also executed the sale deed in respect of other lands. In this sale deed, there is a clear recital that the possession of the land is handed over to the Respondent/Plaintiff. The Respondent examined the scribe and the registered sale deed was duly placed on record. In view of the clear recital in the sale deed executed by the father of the Appellant, the burden was upon the Appellant to demonstrate how the possession still continues with the Appellant.

5 The contention of the learned counsel for the Appellant that since the Appellant did not know about the sale deed no challenge was levied, cannot be accepted. As stated earlier, the sale deed was not executed by the stranger but by the father. It is the case of the Appellant himself that the mutation entries were changed in favour of the Respondent/Plaintiff and the sale deed disclosed, yet, no steps were taken by the Appellant to challenge the sale deed. The learned District Judge has also noted that the Defendant No.1 admitted that the assessment was paid by the Respondent/Plaintiff and the Appellant did not enquire as to who cultivated the sugarcane crop in the recent period. Assuming the evidence regarding the receipt of sugarcane crop advanced by both the parties is kept aside, in view of clear recital of sale deed, if the Appellant wants to show that still the Appellant is in possession, it is for the Appellant to establish this

position. On the contrary, the Appellant has admitted that he has not paid the assessment. The argument that because the name of the Respondent/Plaintiff appeared in the revenue extract, he could not pay the assessment, also does not stand to reason as the period for payment of assessment is substantially long. Apart from this position, the scope of Section 100 has to be kept in mind. The Appellant is calling upon this Court to re-examine and re-assess each piece of evidence so that factual finding other than the one rendered by the first appellate Court, be rendered by this Court. Such exercise is entirely impermissible. The revenue records, bills produced, the factum of mortgage and re-conveyance, deposition of the witnesses, have been considered by the first appellate Court and the first appellate Court has assessed the evidentiary value of each piece of evidence. Ultimately, who is in possession of the suit property is a question of fact. In the circumstances, it is not possible to take another view of factual position. The argument advanced do not lead to any question of law. It also needs to be noted that after the suit was dismissed and the first appeal was filed in the District Court, the learned District Judge granted an interim injunction in favour of the Respondent/Plaintiff on 16 September 2013 and appeal from order preferred by the Appellant was dismissed.

6 No other argument was advanced. In the circumstances, no substantial question of law arises.

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

(N. M. Jamdar, J.)