

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 99 OF 2016
ALONGWITH
CIVIL APPLICATION NO.152 OF 2016

**Revaba alias Revaji Rudrappa Jangam (Swami)
& Ors.**

..... Appellants

VERSUS

Mahaling Kashinath Jangam (Swami) & Ors.

..... Respondents

Mr.Shrishail Sakhare for the Appellants.

Mr.Dilip Shinde for Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 16th AUGUST, 2016

P.C.

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and order dated 5th September, 2015 passed by the learned Principal District Judge, Sangli dismissing the appeal filed by the appellants. In the said appeal (Regular Civil Appeal No. 19 of 2008) the appellants had impugned the judgment and decree passed by the learned trial judge on 23rd November, 2007 directing the appellants to handover vacant possession of the suit property to the respondent herein.

2. The respondents (original plaintiffs) had filed the said Regular Civil Suit No. 416 of 2009 inter alia praying for perpetual injunction and for recovery of possession of open plot out of CTS No.159, Grampanchayat House No.13 and 13B

of Village Deonagar, Taluka Khanapur, District Sangli. It was the case of the original plaintiffs that the suit property was ancestral property of the plaintiffs. They had alienated the suit property to one Appa Dhondi Ayya Jangam in the year 1954. However the possession of the said property continued with the original plaintiffs. It was the case of the plaintiffs that the defendants therein however got their names inserted in the city survey record in respect of the said property. The plaintiffs accordingly filed a civil suit (Regular Civil Suit No. 416 of 1999). The said suit was however dismissed by a judgment and decree dated 9th July, 2003.

3. The respondents thereafter executed an agreement in respect of the suit property with the legal heirs of Appa Dhondi Ayya Jangam and purchased the said property. After entering into the said agreement in respect of the suit property, the respondents filed a suit (Regular Civil Suit No. 272 of 2003) before the learned trial judge inter alia praying for possession of the suit property. The said suit was resisted by the appellants herein by filing written statement and also on the ground that the second suit filed by the respondents was barred by *res-judicata*.

4. The learned trial judge framed various issues including the issue as to whether the said suit filed by the plaintiffs were barred by *res-judicata* or not. The trial court rendered a finding on the issue of *res-judicata* that the second suit was for possession simplicitor and was not barred by *res-judicata*. The trial court took a view that the earlier suit was dismissed on the ground that the respondents herein did not have title in respect of the suit property. Insofar as prayer for possession is concerned, the learned trial judge decreed the suit having held that the appellants herein were in illegal possession of the suit property. Being aggrieved by the said decree and order passed by the learned trial judge, the appellants herein filed an appeal (Regular Civil Appeal No.19 of 2008) before the learned Principal District

Judge, Sangli. By an judgment and order dated 5th September 2015, the learned Principal District Judge dismissed the said appeal. Being aggrieved by the said judgment and decree dated 5th September 2015, by the said order and judgment, the appellants filed this second appeal.

5. Learned counsel appearing for the appellants invited my attention to some of the findings recorded by the learned trial judge in the earlier suit filed by the respondents herein and also the prayers in the plaint. He also invited my attention to the findings recorded by the learned trial judge in Regular Civil Suit No.272 of 2003. He submits that the prayers in both the suits were identical. It is submitted that since the learned trial judge in the first suit had dismissed the said suit after rendering various findings against the respondents herein, the respondents herein could not have filed the second suit for the same reliefs before the learned trial judge. He submits that though the second suit was barred by *res-judicata*, the suit is illegally decreed by the learned trial judge.

6. Learned counsel appearing for the respondents (original plaintiffs) on the other hand invited my attention to the findings rendered by the learned trial judge in the first suit and would submit that since the learned trial judge was of the view that the plaintiffs did not have title in respect of the suit property, the learned trial judge did not pass any order insofar as decree of possession is concerned. He submits that his clients thereafter purchased the said property from the legal heirs of Appa Dhondi Ayya Jangam and having become owners, were entitled to file a suit based on the title in respect of the suit property for possession. He submits that the appellants herein also had filed a separate suit for injunction which was dismissed for default and was not restored.

7. He submits that both the courts below have considered all the pleadings, documents and oral evidence and have rendered the findings of fact. He submits that no substantial question of law has arisen in this appeal.

8. A perusal of the plaint in the first suit filed by the respondents herein indicates that the respondents had filed the said suit on the premise that they were the owners in respect of the suit property. They had prayed for injunction and in the alternate for possession. The learned trial judge however recorded a finding that the respondents were not able to produce any title of re-conveyance after payment of mortgage amount and thus the reliefs for possession was also rejected.

9. It is not in dispute that the respondents thereafter purchased the suit property from the legal heirs of Appa Dhondi Ayya Jangam in whose name the title of the suit property continued in respect of both the properties continued in their name. The respondents had paid consideration for acquiring the said property from the legal heirs of said Appa Dhondi Ayya Jangam.

10. A perusal of the order passed by the learned trial judge clearly indicates that the learned trial judge has rendered a finding of fact that the reliefs claimed in the first suit filed by the respondents, the findings recorded by the learned trial judge in the first suit and the reliefs claimed in the second suit and the reliefs granted by the learned trial judge were totally different. In my view the first suit was rejected by the learned trial judge on the ground that the respondents did not have title in respect of the suit property and accordingly no relief for possession was granted. The second suit was filed on the basis of title acquired by the respondents from the legal heirs of the Appa Dhondi Ayya Jangam. The learned trial judge has rendered a finding that the appellants were in illegal possession of the suit property and had

rightly decreed the suit for possession in favour of the respondents.

11. A perusal of the judgment and order passed by the learned Principal District Judge indicates that the learned Principal District Judge has independently considered the entire evidence led by the parties and also the pleadings and documents and has rendered findings of fact on various issues framed by the appeal court. In my view the learned Principal District Judge has rightly rejected the contentions of the appellants herein that the second suit was not barred by *res-judicata*.

12. In my view both the courts below have rendered various findings of fact which are not perverse and thus cannot be interfered with by this court in this appeal filed under section 100 of the Code of Civil Procedure. There is no substantial question of law having arisen in this second appeal. Second appeal is devoid of merits and is accordingly dismissed.

13. In view of the dismissal of the second appeal, civil application filed by the appellants does not survive and is accordingly dismissed. No order as to costs.

14. Application of the learned counsel appearing for the appellants for stay of the execution of the order passed by this court and the orders passed by the courts below is rejected.

[R.D. DHANUKA, J.]