

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.151 of 2016

[Dashrath Bajirao Tijare (Dead), through LRs. Yamuna wd/o Dashrath
Tijare and others v. Parasram s/o Rambharose and others]

And

Second Appeal No.152 of 2016

[Dashrath Bajirao Tijare (Dead), through LRs. Yamuna wd/o Dashrath
Tijare and others v. Parasram s/o Rambharose and others]

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri D.C. Chahande, Advocate for Appellants.

Shri K.R. Lule, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date : 6th October, 2016

In a suit for permanent injunction restraining the defendant from interfering with the possession of the plaintiff over the suit property, the Trial Court records a finding that the plaintiff is found to be in possession of the suit property. The lower Appellate Court has concurred with the finding recorded by the Trial Court, which is based on the evidence available on record. No substantial question of law arises in a matter where a decree is passed restraining the defendant from interfering with the possession of the plaintiff over the suit property, in the background of the undisputed factual position that the plaintiff is the owner of the suit property.

In a suit for specific performance of contract, it was not

the case that the plaintiff was put in possession of the suit property by way of part performance of the contract. Shri Chahande, the learned counsel for the petitioners, argues that even before the execution of the agreement to sell dated 21-2-1995, the plaintiff was in possession of the suit property. If this is the position, it cannot be said that the case was covered by Section 53-A of the Transfer of Property Act, 1882 so as to award protection from dispossession in a suit filed for specific performance of contract.

Thus, no substantial question of law arises in these second appeals.

Both these second appeals are dismissed.

Judge.

Lanjewar

CERTIFICATE

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