

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 346 OF 2012

Ramdas s/o Pandharinath Shinde
and four others

**APPELLANTS/
ORI. DEFENDANTS**

VERSUS

Siddheshwar s/o Dattatraya Bhanage

**RESPONDENT/
ORI. PLAINTIFF**

Mr. R.L. Kute, Advocate, holding for Mr. V.R.
Dhorde, Advocate for the Appellants
Mrs. C.S. Deshmukh, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 11th JULY, 2017

ORAL ORDER :

Heard the learned counsel for the appellants
and the learned counsel for the respondent.

2. It is the case of the appellants that northern half portion of the suit land was allotted to the original tenant i.e. the predecessor-in-title of appellant nos. 3 and 4 viz. Sahebrao, while the southern half portion was to be given to the landlords i.e. the respondent and his brother viz. Sharad as per the order of the Tenancy Court passed on 30th September, 1957. In pursuance of that order, the possession of the southern half portion is stated to have been given to the

respondent and his brother Sharad on 28th August, 1985. However, none was present on behalf of the tenant at the time of delivery of possession. It is further the case of the appellants that out of the half portion of southern side of the suit land, half portion (i.e. $\frac{1}{4}$ portion of the entire suit land) was purchased by them from the co-landlord namely Sharad. As such, $\frac{3}{4}$ th portion of the total suit land was owned and possessed by the appellants. However, on the basis of the possession receipt dated 28th August, 1985, the respondent is claiming possession over half portion of the suit land. The learned counsel for the appellants submits that the said possession receipt was executed behind the back of the appellants. It was not binding on the appellants. However, the First Appellate Court ignored the findings recorded by the Trial Court and wrongly believed the said possession receipt and decreed the suit for injunction. He submits that there is substantial question of law as regards the admissibility of the possession receipt.

3. On the other hand, the learned counsel for the respondent submits that even if the case of the appellants that they are in possession of $\frac{3}{4}$ th portion

of the suit land is accepted, the remaining 1/4th portion from southern side of the land would remain with the respondent. The respondent had filed the suit for injunction in respect of that 1/4th portion of the suit land only. When the appellants themselves have not disputed that 1/4th portion from southern side of the suit land is in possession of the respondent, it is not necessary to consider the grounds of objections raised by the appellants in the appeal memo and particularly the objection in respect of the possession receipt. She submits that no substantial question of law is involved in this appeal.

4. The rival contentions raised by the learned counsel for the contesting parties as well as the documents referred to by them, clearly show that the appellants are claiming possession over 3/4th portion of the suit land. The remaining 1/4th portion from the southern side is with the respondent about which there is no dispute. The description of the suit land clearly shows that it is in respect of the 1/4th portion from the southern side of the suit land. If that be so, it is not at all necessary to consider the other evidence in view of this admitted position. The learned Trial

Judge did not consider this admitted position and wrongly dismissed the suit for injunction in respect of the 1/4th portion of the suit land, which, admittedly, is not in possession of the appellants. The First Appellate Court has rightly appreciated the evidence and rectified the mistake committed by the Trial Court. I do not find any illegality in the findings recorded by the learned Judge of the Appellate Court. There is absolutely no substantial question of law involved in this appeal. The Second Appeal, therefore, is liable to be dismissed and accordingly dismissed. No costs.

5. In view of dismissal of the Second Appeal, Civil Application No. 6377 of 2012 does not survive and hence, stands disposed of.

[SANGITRAO S. PATIL]
JUDGE

npj/sa346-2012