

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 344 OF 2014
WITH
CIVIL APPLICATION NO. 5889 OF 2014**

1. Udhav s/o Satwaji Ghuge,
Age : 53 years,
Occupation : Agriculture,
2. Asaram s/o Uddhav Ghuge,
Age : 25 years,
Occupation : Agriculture,
3. Sagarbai w/o Udhav Ghuge,
Age : 25 years,
Occupation : Household,
All R/o Kurhadi, Taluka
Jintur, District Parbhani. .. **APPELLANTS.**

VERSUS

Dharmu s/o Harising Rathod,
Age : 85 years,
Occupation : Agriculture, .. **RESPONDENT**
All R/o Kurhadi, Taluka
Jintur, District Parbhani.

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Mr.B.S.Shinde h/f Mr.V.P.Latange, Advocate for the appellants.

Mr. Sanjay D. Hiwrekar, Advocate for the respondent.

CORAM : SANGITRAO S. PATIL, J.

DATE : 24th JULY, 2017

ORAL ORDER :

The appellants (original defendants) in Regular Civil Suit No. 90/2006 have challenged the concurrent findings of facts recorded by the trial Court in that suit as well in Regular Civil Appeal No. 128/2009 by the first appellate Court holding the respondent (original plaintiff) to be in exclusive possession of the suit land admeasuring 1 H. 5 R.

02. The learned counsel for the appellant submits that there is no dispute about possession of the respondent over 25 R. of land out of the suit land. However, the remaining 80 R. of land was not actually in possession of the respondent. The sale-deed dated 23.06.2004. allegedly executed by the mother of appellant No. 1, was challenged by filing the suit. Therefore, the respondent was not entitled to claim possession over that

land. According to him, the trial Court as well as the first appellate Court did not consider this aspect of the matter and wrongly granted injunction in favour of the respondent.

03. The learned counsel for the respondent submits that Special Civil Suit No. 73/2004 filed by the brother of appellant viz. Mahadu challenging the sale-deed dated 23.06.2004 has been dismissed. He submits that possession of the respondent over the entire land admeasuring 1 H. 5 R. has been established by the respondent. The concurrent findings of the trial Court as well as first appellate Court cannot be called in question by filing a Second Appeal.

04. The suit was for injunction simplicitor restraining the appellants from disturbing possession of the respondent over the suit land admeasuring 1 H. 5 R. The possession of the respondent over 25 R. land out of the suit land is

not in dispute. The respondent has proved his possession over the remaining 80 R. of land that was claimed by him on the basis of the sale-deed dated 23.06.2004 executed by the mother of appellant No.1 in favour of the respondent. Special Civil Suit No. 73/2004 filed by the brother of appellant No. 1 challenging that sale-deed has been dismissed. The possession of the respondent over the entire suit land has been recorded in the Record of Rights of the suit land. The trial Court as well as first appellate Court rightly held that the respondent is in exclusive possession of the suit land. This concurrent finding of facts needs no interference. There is no question of law involved in this appeal. Hence, following order :-

O R D E R

- i. The appeal is dismissed.
- ii. No costs.

iii. Stay granted earlier stands vacated.

Sd/-

[SANGITRAO S. PATIL, J.]

shp