

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (St).NO.888 OF 2017  
WITH  
CIVIL APPLICATION NO. 370 OF 2017

Jiyauddin Abdul Gafur .... Appellant

Vs.

Sau. Gangubai Haribhau Salave & Ors, .... Respondents

Mr. Pravartak Pathak, Advocate for the Appellant  
Mr. D.P. Adsule, Advocate for Respondent nos. 1 to 7.

Coram : **N.M. Jamdar, J.**

Date : 11 April, 2017

P.C.:

The Appellant has challenged the concurrent judgment and orders passed by the learned Civil Judge, Junior Division, Nasik Road and the learned District Judge, Nasik dismissing the suit and appeal filed by the Appellant. The Appellant filed Regular Civil Suit No. 159 of 1998 in the Court of Civil Judge, Junior Division, Nasik seeking a declaration that the Appellant has become owner of the suit property, admeasuring 300 sq. mtrs. by way of adverse possession and

to set aside the sale-deed executed by the Respondents. It was the case of the Appellant that the property was initially purchased by father of the Appellant and Respondents i.e. brothers and the Respondents did not occupy the share, which was given to him, which the Appellant continue to occupy and therefore the Appellant had become owner by way of adverse possession. The challenge was levied to the sale-deed executed by the Respondents in respect of the suit property. Both the Courts below held that such suit whereby declaration by way of adverse possession is not sought, could not be entertained and relief of injunction could be sought against a co-owner.

2            Heard the learned counsel for the parties.

3            The learned counsel for the Appellant reiterated the contentions advanced in the courts below. He submitted that the Appellant was in long and continuous possession of the property and therefore entitled to relief of injunction.

4            The injunction that the Appellant seeks is in respect of the entire property including the portion that has come to the share of the Respondent. This claim is based on adverse possession. Such an injunction cannot be granted against the co-owner of the property, even assuming such person is not in possession. The similar relief of

setting aside the sale-deed cannot be granted at the behest of the Appellant who is not the owner. In these circumstances, there is no error in the finding recorded by both the courts below. No substantial question of law arises. The Second Appeal is accordingly dismissed.

5           In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed of.

(N.M. Jamdar, J)