

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL (ST.) NO. 1905 OF 2017

WITH

CIVIL APPLICATION NO. 568 OF 2017

IN

SECOND APPEAL (ST.) NO. 1905 OF 2017

Rajaram Bhairu Kadam & Anr.

...Appellants

Versus

Babaso Shankar Kadam & Ors.

...Respondents

Mr. Umesh Mankapure, for the Appellants.

Mr. Mahindra Deshmukh, for the Respondents No. 1 to 3.

CORAM : N.M. JAMDAR, J.

DATE : 6 April 2017

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. Both the Courts have concurrently held that the Civil Court did not have jurisdiction to decide the Suit. The orders passed by the Tahsildar under Section 5 of the Mamlatdars' Courts Act, 1906 or under 143 of the Maharashtra Land

Revenue Code, 1966 do not decide the substantive rights between the parties, which have to be ultimately decided in a Civil Suit. In view of this position, the learned Counsel for the Appellants, on instructions, states that the substantive Suit for adjudication of *inter se* rights will be filed and seeks leave to withdraw the Second Appeal.

3. Since both the Courts have held that the Civil Court does not have jurisdiction, the findings on merits rendered in the impugned decisions would be of no consequence having been given without jurisdiction. The learned Counsel for the Appellant submitted that there may be an issue of limitation for filing a fresh Suit. This apprehension is unwarranted. The Suit, if any, filed by the Appellants will be based on the substantive right and apprehended action of the Respondents. Such apprehended action of the Respondent can always give rise to a fresh cause of action. Second Appeal is accordingly, disposed of as withdrawn.

4. The learned Counsel for the Respondents submitted that no action is yet has been initiated by the Respondents and the Respondents will not do so for a period of two weeks from today. Statement is accepted.

[N.M. JAMDAR, J.]