

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.101 OF 2014
WITH
CIVIL APPLICATION NO. 717 OF 2013

Smt. Krushnabai Ramchandra Gundal Appellants
& Ors.

Vs.

Sou. Janabai Narayan Gundal Respondents
thru' Power of Attorney holder
Shri. Kisan Narayan Gundal & Anr.

Mr. T.D. Deshmukh for the Appellants and Applicants.

Coram : N.M. Jamdar, J.

Date : 11 April, 2017

P.C.:

Heard the Learned counsel for the Appellants.

2 The appellants have challenged concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Khed, Rajgurunagar and the learned District Judge, Pune decreeing the suit of the Respondent-Plaintiff for perpetual injunction against the Appellants.

3 The Respondent-Plaintiff filed Regular Civil Suit No. 114 of 2016 seeking perpetual injunction against the Appellants. It was the case of the Respondent-Plaintiff that the suit property was purchased by way of registered sale-deed and he is in possession of the same. The Appellants contested the suit, which was decreed on 15 June 2010. The Appeal No. 526 of 2010 filed by the Appellants was dismissed by the learned District Judge on 23 October 2012.

4 The learned counsel for the Appellants submitted that both the courts have not considered various admissions given by the Power of Attorney of the Respondent-Plaintiff, so also the fact that the Respondent-Plaintiff did not step into witness box and the averments in the registered lease deed in favour of the Appellants.

5 The factum of possession is a question of fact. Both the courts have considered the recitals in the registered sale-deed, which states that possession was handed over to the Respondent-Plaintiff. This fact also accepted by the earlier owner. The learned counsel for the Appellants has sought to rely upon lease deed for a period of 20 years executed in the year 1994, and the statement made by the Power of Attorney. The Courts below have analysed these aspects for determining the factum of possession. Both the courts have taken note of the revenue records, wherein the name of the Respondent-

Plaintiff appears from the year 2001 and that the Appellants made no efforts to get their name mutated in the cultivator's column. Apart from these deeds, the Appellants did not produce any other documentary evidence in support of the case that the Appellants were in possession. The courts have weighed the evidence led by the parties and found the case of the Respondent-Plaintiff that the Respondent-Plaintiff are in possession is more believable. Both the courts have found that the recitals in the sale-deed coupled with long standing entries in the revenue record shows the possession of the Respondent-Plaintiff. The arguments advanced by the learned counsel for the Appellants that more weightage should be given to the evidence led by the Appellants, is in realm of assessment of evidence. No question of law arises. The Second Appeal is accordingly dismissed.

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

(N.M. Jamdar, J)