

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

**SECOND APPEAL NO.793 OF 2016  
WITH  
CIVIL APPLICATION NO.1566 OF 2016**

Shri Tatoba Vithoba Chougule ... Appellant  
Versus  
Shri Prakash Maruti Chougule ... Respondent  
.....  
Mr. Mithun Mahajan for the Appellant.  
.....

**CORAM : S.C. GUPTE, J.**

**DATE : 31 JANUARY 2017**

P.C. :

. Heard learned Counsel for the Appellant.

2 This second appeal challenges the judgment and order passed by the District Court, Sangli in Regular Civil Appeal No.1 of 2011. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the present Appellant and confirmed the judgment and decree dated 28 October 2010 passed by the Civil Judge, Junior Division, Palus in Regular Civil Suit No.67 of 2008 (Old Regular Civil Suit No.84 of 1994). The Appellant (original Plaintiff) had filed the suit for perpetual injunction against the Respondent (original Defendant), based on his title as well as possession. Whereas the Appellant's prior possession was found by both the Courts below, his case of title was not accepted. The Appellant claims title as a mortgagee in possession of the suit property under a deed of mortgage by conditional sale. It is his case that the condition of

repayment of mortgage money within the stipulated period of seven years under the deed of mortgage not having been complied with by the Respondent, his ownership under the conditional sale in his favour has become absolute. It is an admitted position that the Appellant did not file any suit for foreclosure. The Respondent cannot be said to have lost his equity of redemption in the premises. The Appellant cannot, accordingly, claim to be the absolute owner of the suit property. On that basis, both the Courts below have rejected the Appellant's case. The rejection is in keeping with the law of mortgage and cannot be faulted in any manner. There is no merit in the second appeal, and the same is dismissed. No order as to costs.

3 In view of the disposal of the second appeal, the civil application does not survive, and the same is also dismissed.

**(S.C. GUPTE, J.)**