

Sequeira

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

*SECOND APPEAL NO. 289 OF 2014
Along with
CIVIL APPLICATION NO. 733 OF 2014*

Shri Shrikrishna Anant Shirsat & anr. .. Appellants
Vs
Shri Shabir Gafur Khan. .. Respondent

Mr.Sudhir Prabhu, for Appellants.

Mr.Gangadhar Sabnis, for the Respondent.

*Coram : N.M.Jamdar, J.
Date : 18 April 2017.*

Oral Order :

The Appellants have challenged the concurrent Judgment and Orders passed by the learned Civil Judge, Junior Division, Kudal and learned District Judge, Sindhudurg – Oros, decreeing the suit filed by the Respondent-Plaintiff and dismissing the Appeal partly, modifying the order passed by the learned Civil Judge.

2. The Respondent filed the Regular Civil Suit No.73 of 2009 seeking possession of the suit property which included an open piece of land and a structure of shed thereupon. The Suit was decreed by the learned Civil Judge on 29 February 2012 and a regular Civil

Appeal No.124 of 2012 filed by the Appellants was dismissed by the learned District Judge, Sindhudurg, at Oros, on 3 March 2014.

3. The learned counsel for the Appellants submitted that there was no specific prayer of mandatory injunction for removal of the shed. He submitted that the Respondent-Plaintiff has not specified in the plaint as to when the shed was constructed so as to avoid bar of limitation. He submitted that such mandatory relief of removal of a shed without considering these aspects could not have been granted. Since the Respondent had suppressed these facts the discretionary relief could not have been granted. The learned counsel for the Respondent pointed out the prayers made in the plaint regarding the removal of the structure.

4. The Appellants have been found having no rights whatsoever in the suit land. This theory of oral lease of fifteen years has not been accepted as the Appellants have failed to prove any such legal right. The Suit filed by the Respondent-Plaintiff is simplistic. It is based on title on the ground that the Appellants have no right. There is no bar of limitation of three years as sought to be contended by the learned counsel for the Appellants, for a suit based on title for possession of an immovable property. Since the theory of lease has not been proved, all that the Respondent has sought is possession of the suit land after removal of the structure thereof. There is no warrant to treat the land, as well as the shed differently as sought to be contended by Appellants as this is not a case of a termination of

lease. In these circumstances no substantial question of law arises. Both the Courts have rightly directed the Appellants to remove the shed as well as hand over the suit land to the Respondent-Plaintiff. Second Appeal is accordingly dismissed. Civil Application also stands disposed of accordingly.

(N.M.Jamdar, J.)