

Sequeira

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

SECOND APPEAL NO. 764 OF 2015

Shri Swami Jagatguru Shankaracharya
Peeth, Karveer- through Mathadhipati
Shri Yashwant Kashid Kulkarni
@ Appa Kulkarni, the name after Sanyas
Shri Vidya Narsinha Bharati. .. Appellant
Vs
Dattatraya @ Deepak Anandrao Misal & ors. .. Respondents

Mr.Rajesh Datar, for the Appellant.

Coram : N.M.Jamdar, J.
Date : 24 April 2017.

Oral Order :

The Appellant-trust / original Defendant has challenged the concurrent judgment and orders passed by learned Civil Judge Junior Division, Kolhapur and learned District Judge, Kolhapur whereby the Suit filed by the Respondents-Plaintiffs was decreed and the Appeal filed by the Appellant was dismissed.

2. The Suit bearing No.395 of 2007 was filed by the Respondents-Plaintiffs seeking a declaration in respect adverse possession and for injunction. The issue of adverse possession was deleted. The learned Civil Judge by judgment and order dated 18 April 2012, granted a

decree of injunction against the Appellant that the Appellant will not try to take forcible possession from the Respondents without following due process of law. The Regular Civil Appeal No.236 of 2012 filed by the Appellant was dismissed by the learned District Judge, on 13 March 2015.

3. The learned counsel for the Appellant contended that the learned District Judge has erred in holding that the Respondents-Plaintiffs proved their legal possession over the suit property. He submitted that no legality can be attached to the possession of the Appellant and suit is already filed for recovery of possession.

4. Though the learned District Judge has used the words 'legal possession' while framing the issue and answering the same, it will have to be understood in the context of the discussion that has followed. The learned District Judge has confirmed the liberty given to the Appellant for filing the suit for recovery of possession and the injunction is granted on the basis of possession of the Respondent. In these circumstances, the Suit which is now filed by the Appellant on the basis of its title, pursuant to the liberty granted by both the Courts, will have to be decided on its own merits. In these circumstances, no question of law arises. Second Appeal is accordingly disposed of.

(N.M.Jamdar, J.)