

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

SECOND APPEAL NO. 752 OF 2016

Dilip Mahipati More,
since deceased through his legal representatives
1A. Smt. Nirmala Dilip More & Ors. ...Appellants
(Orig.Appellants/Plaintiffs)

vs.

Ramchandra Sidhu Waiphalkar,
since deceased through his legal representatives
1A. Krishnabai Ramchandra Waiphalkar & Ors. ...Respondents
(Orig.Respondents/Defendants)

Mr.Harish Pawar for Appellants.
MR.N.N. Wadikar I/b. N.V. Pawar for Respondents.

CORAM : S.C. GUPTE, J.

16 MARCH 2017

P.C.:

Heard learned Counsel for the parties.

2 The second appeal challenges a judgment and order passed by the District Court, Satara in Regular Civil Appeal No.355/2008. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellants herein / their predecessors against the judgment and decree of dismissal passed by the trial court in the suit filed by the predecessor-in-title of Appellant Nos.1(A) to 1(I).

3 The Plaintiff filed the present suit claiming ownership of the suit property by adverse possession and seeking to protect his possession. The suit was dismissed by the trial court. When the matter went before the lower appellate court, the Plaintiff gave up his case of adverse possession

and simply sought to protect his settled possession of the suit property. By the impugned judgment and order, the lower appellate court came to the conclusion that the Plaintiff had not proved his possession over the suit property. Whether the Plaintiff was in settled possession of suit property is a pure question of fact. Both the courts below having come to a unanimous finding that the Plaintiff had failed to prove his possession, no substantial question of law arises in the matter.

4 Learned Counsel for the Appellants sought to rely on certain evidence before the courts below to claim that the original Plaintiff was in fact in possession of the suit property. This is a matter of assessment of evidence. Unless the Appellants show that the assessment was perverse on the part of the courts below, no question of law arises from such assessment. No such perversity is pointed out in the present case. There is no merit, accordingly, in the second appeal. The same is dismissed. No order as to costs.

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

(S.C. GUPTE, J.)