

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 25180 OF 2016
WITH
CIVIL APPLICATION NO. 1421 OF 2016**

Shri. Waman Jau Bhambare

....Appellant

V/s.

Sakharam Bango Tiskar
Since deceased through his legal
heirs and representatives

....Respondents

Mr. Prashant Kulkarni, Advocate for the appellant and applicant.

Mr. A.G. Damle, Senior Advocate a/w. Mr. Amol Mhatre, Advocate
for respondent nos.1(1) to 1(4).

Coram :- N.M. Jamdar, J.

Date :- 17 April 2017.

ORAL ORDER :-

. The Appellant has challenged the judgment and order
passed by the learned District Judge, Thane in Civil Appeal No.59

of 2010 allowing the Appeal filed by Respondent no.1-Original Defendant no.1 and setting aside the decree passed by the learned Civil Judge Junior Division, Bhiwandi in favour of the Appellants wherein the learned Civil Judge has granted an order of injunction against respondent no.1.

2). The Appellant filed a suit bearing No. 343 of 2004 praying for a permanent injunction against the defendant-respondent herein. It was the case of the appellant that, one Ambo Bokari was a tenant in respect of the suit land. He gave the suit land to the Appellant sometime in the year 1962 for which the Appellant paid an amount of Rs.1200/-. It was the case of the Appellant that, the Appellant is in possession of the suit land since the year 1962, and the Respondents were trying to interfere with his possession, claiming an ownership in the suit property. The learned Civil Judge decreed the suit by judgment and order dated 30th April, 2010. The Appeal filed by Respondent no.1 was allowed by learned District Judge by order dated 30 April, 2010.

3). The learned Counsel for the Appellant submitted that, the overwhelming material produced by the Appellant in respect of the possession has been rightly accepted by the trial Court. He submitted that various revenue extracts and deposition of witnesses have been rightly appreciated by the learned Civil Judge to hold that the Appellant is in possession. The learned

Counsel submitted that the learned District Judge, without considering this material, has come to the conclusion that the Appellants are not in possession. He submitted that the Respondent has no right in respect of the suit property. The learned Counsel for the Respondent supported the impugned order and submitted that the Appellants have not produced any cogent material.

4). Whether the Appellant is in possession of the suit property or not is essentially a question of fact. The appreciation of evidence by the First Appellate Court can be inferred with only if there is a substantial question of law, which may arise, if the First Appellate Court has committed any perversity in appreciation of evidence. In the present case, the Appellant has not stepped in the witness box and examined his son who had no knowledge regarding the position from the year 1962. Even the witness, in whose presence the so called transaction of handing over money to Ambo took place, was only 15 year old. Infact, the learned Civil Judge recorded a finding that the Appellant had not produced any documentary evidence in support of the claim of the Appellant that the Appellant is in possession since 1960. Yet, the learned Civil Judge on preponderance of probability granted an order of injunction. No cross-objections were filed by the Appellant against the finding of

the learned Civil Judge regarding lack of documentary evidence.

5). The Plaintiff has approached the Court seeking an injunction based on possession. Unless cogent material was produced, injunction could not have been granted merely on preponderance of probability. The Appellant also did not take any efforts to enter his name in the cultivator's column. The learned District Judge also took note of the entries in favour of the Respondent-Defendants. Considering this material and the stage of evidence if the Appellate Court has come to the conclusion that the Appellant is not in possession, it cannot be said that the conclusion is perverse. It is not possible to re-appreciate the evidence. No question of law arises. The Second Appeal is accordingly dismissed.

6). In view of disposal of the Second Appeal, Civil Application No. 1421 of 2016 does not survive. The same is accordingly disposed off.

(N.M. Jamdar, J)