

VKS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.669 OF 2013

Smt. Shantabai Dattatraya Patil
and ors

.... Appellants.

V/s.
Sudhakar Kashinath Doijad
and ors

.... Respondents

Mr. G. N. Salunke, i/by Mr.P.G. Pagarkar, for the appellants.

Mr. Abhijit M. Adangule, for the Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd OCTOBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellants and respondent.
- 2] This appeal takes an exception to the judgment and order dated 12.9.2001, passed by the Civil Judge J.D. Radhanagari, in Regular Civil Suit No.95 of 1006, against which Regular Civil Appeal NO.435 of 2001, was preferred and which came to be dismissed by the District Judge-1, Kolhapur, by his judgment and order dated 21.11.2012.
- 3] The said suit was filed by the appellants claiming to be the owners and possessors of Gram Panchayat house No.33. The trial Court has, after finding that no sufficient description of the suit property is given in the plaint, dismissed the suit; whereas the first Appellate Court

has also dismissed the appeal, holding that the appellants have failed to prove their ownership and possession over the suit property.

4] The grievance of the learned counsel for the appellants is that respondents had in their written statement categorically admitted that they have no concern with the Gram Panchayat Property No.33 which was initially standing in the name of Raibai. Moreover, respondents had also not staked their claim to their property through Raibai. In such situation, according to learned counsel for appellant, both, the trial Court and the Appellate Court, have committed an error in dismissing the suit. Hence there is substantial question of law involved in the Appeal.

5] However, in my considered opinion, perusal of the judgment of the trial Court and the Appellate Court, clearly go to prove that both of the Courts have appreciated the material evidence on record properly. The Appellate Court also held that, except the bare words of appellant, there is no documentary evidence to indicate the appellant's possession over the suit property, being the legal heir Raibai. According to appellant he is distant nephew of Raibai. However, the Appellate Court has observed that, Raibai was not having any brother-in-law. This fact is admitted by appellant's witness. Hence, there is no question of appellant claiming ownership over the suit property, through Raibai.

6] Moreover, there is serious dispute in respect of the

description of the suit property and it was for the appellant to prove that the suit property was left behind by Raibai and he is in possession thereof.

7] Admittedly there is no pleading in the plaint that in the suit property there is a flour mill. The evidence on record, however, proves that there is floor mill in the suit property and it's electricity connection is standing in the name of respondent No.2.

8] Hence both the trial Court and Appellate Court, have rightly held that appellants have failed to prove their case and accordingly dismissed the suit. There is no substantial question of law involved in the appeal. The Appeal, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]