

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

**SECOND APPEAL NO. 208 OF 2015
WITH
CIVIL APPLICATION NO. 435 OF 2015
IN
SECOND APPEAL NO. 208 OF 2015**

Bhikaji Dhondu Bapardekar & Anr.

....Appellants

V/s.

Bhanji Laxman Aalav & Ors.

....Respondents

Mr. Sachin Gite for the appellants.

Mr. Aniket P. Ranade for the respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 27TH NOVEMBER, 2018.

P.C.:

. The appellants herein has challenged the judgment dated 07/07/2014 whereby the learned Principal District Judge, Sindhudurg has dismissed the Regular Civil Appeal No.55/2009 and thereby confirmed the judgment dated 21/03/2009 passed by the Civil Judge, Junior Division, Deogad in Regular Civil Suit No.60/1989.

2. The appellant no.1 was the plaintiff and the appellant no.2 was the defendant no.7 in the suit. Respondent no.7-Laxmibai (original defendant no.8) is the mother of the plaintiff and the defendant no.7. The subject matter of the suit was 37 parcels of land situated at Village

Goval, Taluka Deogad, Dist. Sindhudurg. The plaintiff claimed that he alongwith the defendant nos.7 and 8 are the exclusive owners in possession of 20 parcels of land more particularly described in paragraph 1A of the plaint and co-owners in joint possession of land described in paragraph 1B to 1E of the plaint.

3. The plaintiff claimed that the suit property was recorded in the Survey records in the name of his father. However, in the year 1987, the defendant no.1 in collusion with the revenue officers got his name deleted from the survey records. Taking advantage of the wrong survey entries, the respondent nos.1 to 6 (original defendant nos.1 to 6) are interfering with his possession. Based on these pleadings, the plaintiff filed the suit for declaration of title and perpetual injunction in respect of the suit property described in paragraph 1-A of the plaint. In the alternative, the plaintiff has sought recovery of possession of the said property. The plaintiff also prayed for partition of his share in property described in paragraph 1B to 1E of the plaint.

4. The learned Trial Judge dismissed the suit holding that the plaintiff had failed to prove his title as well as possession in respect of the suit property. The plaintiff challenged the judgment before the First Appellate Court at Sindhudurg. The First Appellate Court

permitted the plaintiff to adduce additional evidence under Order 41 Rule 27 of the Civil Procedure Code. Upon appreciating the evidence adduced by the respective parties, the learned District Judge confirmed the findings that the plaintiff has failed to prove his title and possession in respect of the suit properties and hence, dismissed the Appeal. Aggrieved by these concurrent findings, the plaintiff has filed this Second Appeal under Section 100 of Civil Procedure Code.

5. Both the Courts below have recorded a finding that the plaintiff has failed to prove his title as well as possession in respect of the suit property. While assailing the impugned judgment, Mr. Sachin Gite, the learned counsel for the plaintiff submits that the plaintiff has proved that he is in settled possession of the suit property and as such he was entitled to protect his possession. He, therefore, contends that the Courts below have erred in rejecting the relief of perpetual injunction.

6. The plaintiff had claimed to be in possession of the suit property described at paragraph 1-A as the exclusive owner whereas he had claimed to be a co-owner and in joint possession of the property described in paragraph 1B of the plaint. It is also seen that before the First Appellate Court, the plaintiff had claimed to be a tenant in khoti

land. Both Courts have observed that the plaintiff has not produced any title documents to prove his title in respect of the suit property. The learned counsel for the appellant does not challenge this finding.

7. The plaintiff claims that he is in settled possession and that he has acquired title by adverse possession. At the same time, the plaintiff has sought recovery of possession. The prayer for recovery of possession presupposes that the plaintiff is not in possession of the land and thus negates the claim of settled possession. The pleadings are thus not only inconsistent but are self destructive.

8. Upon considering the pleadings and evidence, the Courts below have recorded a finding that the plaintiff has failed to prove his title as well as possession in respect of the suit properties. These concurrent finding of facts are not perverse or illegal but are based on evidence on record. The Appeal does not involve substantial question of law. Hence, the Appeal is dismissed.

9. Civil Application No.435 of 2015 for stay stands disposed of in view of the dismissal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)