

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.117 OF 2018
ALONG WITH
CIVIL APPLICATION NO.108 OF 2018

Sumanbai Walmik More and Anr.	 Appellants-Applicants
V/s.	
Kamalabai Ranganath Pawar	 Respondent

Mr. Ganesh S. Bhat for the Appellants-Applicants.

Mr. Milind M. Sathaye for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH JULY 2018.

P.C. :

1. Heard Mr. Bhat, learned counsel for the Appellants-Applicants, and Mr. Sathaye, learned counsel for the Respondent.
2. The Suit filed by the Respondent herein for getting possession of the suit premises, on the count that Appellants have taken forcible possession thereof on 13th May 2004, came to be dismissed by the Trial Court on the ground that, since beginning, the Appellants-Defendants are in possession thereof and thus, Respondent has failed to prove the cause of action for filing of the Suit.
3. The first Appellate Court, however, decreed the said Suit holding that, though the Appellants are proved to be in possession thereof, the plea of adverse possession is neither pleaded, nor proved. Hence, Respondent being the owner of the suit premises, he is entitled to recover the same.

4. While challenging this finding of the first Appellate Court, the only submission advanced by learned counsel for the Appellants is that, when Respondent's case was based on the ground that Appellants have taken forcible possession on 13th May 2004 and as held by both the Courts below, the Respondent has failed to prove the said fact, which was a cause of action for the Suit; then, the Suit has to be dismissed and not decreed.

5. However, it is concurrently held by both the Courts below that the Respondent has proved execution of the 'Sale-Deed' of the suit property and her title over the suit property. Therefore, even if it is accepted that she has failed to prove that Appellants have taken forcible possession of the suit property on 13th May 2004, in that case also, on the basis of the title, she becomes entitled to get possession of the suit property; especially when the Appellants have failed either to plead or even to prove their plea of adverse possession, as held by both the Courts below.

6. Hence, no fault can be found in the impugned 'Judgment and Decree' of the first Appellate Court. The Second Appeal, therefore, does not raise any substantial question of law; hence, stands dismissed.

7. In view of dismissal of the Second Appeal, Civil Application No.108 of 2018 pending therein does not survive and the same stands disposed of as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]