

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

SECOND APPEAL NO. 713 OF 2015

Dhondu Kashiram Shetye (Deceased)
through LR. Rajesh D. Shetye ..Appellant

v/s.

Madhukar Raghunath Jaguste & Ors. ..Respondents

Mr. J.P.Kharge for the Appellant
None for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 11th DECEMBER, 2018.**

P.C.

1. The appellant herein has challenged the judgment dated 13th November, 2014 whereby the learned Judge, Khed has dismissed the regular Civil Appeal No. 23 of 2007 and has thereby confirmed the judgment and decree dated 31st March, 2007 passed by the trial Court dismissing the regular Civil Suit No. 85 of 1997 filed by the aforesaid appellant.

2. The appellant was the plaintiff in the suit. He claimed to be the owner in possession of property under Gut No. 1669 and 1670

situated at Aakale, Taluka Chiplun . The plaintiff claimed that the suit properties are being cultivated by him and his the family members. The appellant filed a suit for declaration and possession alleging that the defendant had obstructed his possession. The defendant had contested the suit mainly on the ground that the suit properties were in their possession since the year 1946, The defendants had further stated that the portion of the property under Gut No. 1670 was acquired for construction of Chiplun Tiware Road via Kalkavane and that the compensation in respect of the said land was received by them.

3. Based on the aforesaid pleadings, the learned trial Court had framed the issues. Both the parties had adduced evidence and upon appreciating the evidence adducted by the respective parties, the learned trial Judge held that the plaintiff had failed to prove his title in the property. The learned Judge has also observed that the plaintiff was not in possession of the suit property. The learned trial Judge further held that the property was recorded in the survey records in the name of the defendants and their family members since the year 1947. The learned Judge also observed that the

plaintiff had admitted that he had seen the said survey entries. It is stated that despite which no steps were taken. The learned Judge had also observed that 20 gunthas land was acquired from Gut No.1670 and that compensation in respect of the said land was received by the defendants. The learned Judge therefore held that the defendant was in possession of the suit property, based on the said finding, the learned trial Judge dismissed the said suit.

4. Being aggrieved by the said judgment and decree the plaintiffs have filed the appeal being Regular Civil Appeal No. 23 of 2007. The District Court considered the question whether the plaintiffs had lawful title in respect of the suit property and whether they were in possession of the suit land. The learned District Judge, upon appreciating the evidence confirmed the findings of the trial Court and dismissed the appeal. The appellant herein has challenged the said concurrent finding by filing this second appeal under section 100 of Cr.P.C.

5. I have gone through the records. The plaintiff claims to be the owner in possession of the property. The plaintiff has not produced any title documents. The records reveal that the property is

surveyed in the Survey Record in the name of the defendant since 1947. The records also reveal that portion of the land was acquired for the purpose of construction of road. The compensation in respect of the said land was received by the defendant. The plaintiff had not raised any objection as regards the acquisition or payment of compensation to the defendant. The plaintiff has also not adduced any other evidence to prove that he was in possession of the suit land. Both the courts below have considered this aspect and have recorded a finding that the plaintiff had failed to prove his possession and title in respect of the suit property. These finding of facts are based on the evidence on record and the same are neither perverse, nor illegal. The appeal does not involve any substantial question of law. The appeal is therefore dismissed.

(ANUJA PRABHUDESSAI, J.)