

Sequeira

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

***SECOND APPEAL NO. 591 OF 2015  
Along with  
CIVIL APPLICATION NO. 1310 OF 2015***

Mr.Dayal Shantaram Bhagat

.. Appellant

*Vs*

Mr.Narayan Sonu Bhagat

.. Respondent

Mr.Sanskar Marathe, for the Appellant.

Mr.Sunil G.Karandikar, for the Respondent.

***Coram : N.M.Jamdar, J.  
Date : 22 January 2018.***

***Oral Order :***

The Appellant – original Defendant has challenged the concurrent judgments and orders passed by the Civil Judge Junior Division Malwan and District Judge, Sindhudurg-Oras, decreeing the suit filed by the Plaintiff for permanent injunction and dismissing the Appeal.

2. Heard learned counsel for the parties.

3. That the property was owned by the predecessor of the Respondent-Plaintiff, is not in dispute. It is the case of the Appellant that the property was mortgaged by the predecessor of the Plaintiff in favour of one Saajbaa Govind Kamat and he had appointed one Chandrashekhar Vishnu Shirodkar as a person to recover the amount. According to the Appellant the amount of Rs.280/- was paid to Shri Shirodkar and he redeemed the mortgage and thereafter he is in possession. The suit for injunction is filed by the Respondent-Plaintiff on the basis of his title. The Appellant set up a rival title. The only evidence produced in respect of theory of mortgage is regarding the mutation entry and a receipt Exhibit 63. This receipt discloses no particulars at all. The original mortgage is not produced. No documents demonstrating the mortgage have been produced. Therefore, merely on the basis of mutation entry, theory of mortgage was rightly not accepted. The contention of the Appellant that the Appellant's possession be protected, cannot be accepted. It was not the case of the Appellant that even though the Appellant has no title, his possession be protected and he cannot be dispossessed without due course of law. Specific case setting up rival in title has been put up which was pursued in both Courts. Litigant must be candid regarding the stand at the inception of the proceedings. In the circumstances, no substantial question of law arises. Second Appeal is dismissed. Civil Application stands disposed of.

*(N.M.Jamdar, J.)*