

JPP

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

SECOND APPEAL NO. 452 OF 2015

Mahadeo Dada Randive.

...Appellant.

V/s.

Mrs. Janabai Chandeo Pawar (Patil) & Ors. ... Respondents.

Mr. Ajay Joshi for the Appellant.

Mr. Shankar M. Katkar a/w. Manisha Devkar for the Respondents.

CORAM : N.M. Jamdar, J.

DATE : 23 January, 2018.

Oral Order :-

Heard learned Counsel for the parties. The Appellant has challenged the judgments and orders passed by the Civil Judge, Junior Division, Pandharpur and District Judge, Pandharpur, wherein the suit filed by the Respondent – Plaintiff for injunction was decreed and the Appeal filed by the Appellant was dismissed.

2. Both the Courts have concurrently held that the suit property was an ancestral property and the Respondent – Plaintiff

has a share in the same. It is the case of the Respondent – Plaintiff that the Appellant proceeded to execute the sale deed with the other co-sharers in respect of the part of the suit land. It was the case of the Plaintiff that she was in possession of the suit property. Both the Courts have accepted her case and have granted the decree of injunction.

3. The learned Counsel for the Appellant submitted that the Respondent – Plaintiff has not produced any evidence to show that she was in possession of the suit property without which, order of injunction could not have been granted. The fact that the Appellant has share in the suit property has been upheld by both the Courts. The learned Counsel for the Respondent has placed on record copy of the judgment rendered in Regular Civil Suit No. 209 of 2009 by the learned Civil Judge, Junior Division, Pandharpur dated 5 December 2013, wherein decree has been granted in favour of the Respondent – Plaintiff upholding her right of preemption. The learned Counsel for the Appellant states that this decree has been stayed in Appeal.

4. Once the Respondent – Plaintiff is a co-sharer in the suit property and it is held to be a joint family property, the Appellant, a stranger-purchaser, must demonstrate that he was actually put in possession of the property. It cannot be contended by the Appellant

that the Appellant has no duty whatsoever to demonstrate that he was put in possession. Reliance is placed on the recital in the sale deed. However, even though the trial went on for almost two years, no attempt was made to produce any electricity bills, etc. to show that the Appellant was in possession and/or cultivating the suit land. On the assessment of this evidence, the finding of both the Courts that the Respondent – Plaintiff is in possession, being a co-sharer, is a possible finding. The Appellant being a stranger-purchaser will have to enforce partition. Till this is done, a co-sharer is entitled for protection by order of injunction that such a co-sharer is not dispossessed.

5. In the circumstances, no question of law arises for consideration, as whether the Respondent is in possession of the suit property is essentially a question of fact. Needless to state that the proceedings arising from the Regular Civil Suit No. 209 of 2009 will be decided on their own merits. Second Appeal is dismissed.

(N.M. Jamdar, J.)