

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 303 OF 2009

Sou. Suman Ashok Warude & Anr. ... Appellants
Vs.
Parvati Genba Dhonde & Anr. ... Respondents

Mr. Manoj A. Patil, Advocate for the appellants.
Mr. Prashant M. Patil i/b. V.B. Konde-Deshmukh, Advocate for respondent nos. 1A to 1C.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **23rd April, 2018.**

P.C.:

In this Second Appeal, the judgment and decree dated 2nd January, 2009 passed by the learned District Judge-II, Pune in Regular Civil Appeal No. 367 of 2007 confirming the judgment and decree dated 4th April, 2007 passed by the learned Civil Judge Junior Division, Bhore in Regular Civil Suit No. 75 of 2001 thereby decreeing the said suit and directed the defendants not to disturb the plaintiff's possession and not to alienate the suit property to anybody by any manner, is challenged.

2. The appellants are sisters of sole respondent/plaintiff. The respondent has filed the suit for simplicitor injunction against his married sisters in respect of suit property, i.e., land at Gat No. 1181

admeasuring 20R including a house bearing no. 54 standing thereon.

3. The learned counsel for the appellants has submitted that the trial Court and first Appellate Court both have committed error in granting the order of injunction in favour of respondent/plaintiff without ascertaining the fact of possession. He submitted that the injunction cannot be granted in favour of the person who is not in possession of immovable property. The learned counsel submitted that the evidence of revenue entry and payment of tax by the appellants is not considered by the trial Court and First Appellate Court and thus, the judgment and decree passed by the Courts below is illegal and to be set aside on the basis of substantial question of law.

4. The learned counsel for the respondent pointed out that the mother of plaintiff and defendants have filed Regular Civil Suit No. 181 of 1987 against the plaintiff/respondent, who was taken in adoption by the father. He has submitted that the said suit was filed by the mother for declaration that the adoption was illegal and the respondent/plaintiff is not her adopted son. However, the said suit was compromised between the mother and plaintiff/respondent and it

was agreed that the respondent/son will be in possession of the suit land, i.e., 20R land from Gat No. 1181 including the house standing thereon. The compromise decree Exhibit 65 was produced. The learned counsel submitted that in view of the compromise decree, the fact of possession was proved by the respondent/plaintiff. He supported the judgment and decree passed by the Courts below.

5. Read the judgment of both the Courts. Considered the submissions of the learned counsel for both the sides. The possession is the matter of fact. The Courts below have considered the issue of possession correctly when the compromise pursis Exhibit 65 was filed and relied. I am informed by the learned counsel for the appellants that the appellants/sisters have challenged the compromise pursis in Regular Civil Suit No. 181 of 1987 in separate proceedings. Under such circumstances, no substantial question of law is made out. Hence, Second Appeal is dismissed.

(MRIDULA BHATKAR, J.)