

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

**SECOND APPEAL NO. 95 OF 2015
WITH
CIVIL APPLICATION NO. 189 OF 2015**

Bhikoba Genba Bathe (Since deceased) Through LRs. & Ors.	...	Appellants
V/s. Appa Bahu Bathe & Ors.	...	Respondents

- Mr.Parag M. Tilak for the Appellants.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellants.

2] This Appeal is preferred against the 'Judgment and Decree' dated 12/02/2014 passed by the District Judge-17, Pune, thereby dismissing the Civil Appeal No.605 of 2011 which was preferred against the 'Judgment and Decree' dated 03/05/2011 passed by the Civil Judge, Junior Division, Saswad, in Regular Civil Suit No.143 of 2001.

3] The said Suit was filed by the present Appellants seeking the relief of permanent injunction restraining the Respondents from causing obstruction to their possession in the suit land. In the said Suit, the Counter Claim was filed by the Respondents seeking the 'Decree of Redemption' of the mortgage and possession of the suit land. The Trial Court has dismissed the Suit and decreed the Counter Claim. The Appellate Court has dismissed the Appeal but modified the order in respect of the payment of deficit Court Fees on the Counter Claim.

4] This concurrent finding of the Trial Court and the Appellate Court is assailed in the present Appeal by learned counsel for the Appellants stating that, when the Appellants are in possession on the basis of the usufructuary mortgage, it was necessary for the Respondents to file a Suit for redemption of mortgage. However, no such specific prayer is made in the Counter Claim and no evidence is also led to that effect, and despite that both the Courts below have decreed the Counter Claim.

5] However, in my considered opinion, once the Appellants have admitted their possession in the suit land on the basis of the usufructuary mortgage, there is absolutely no burden of proof is lying on the Respondents while seeking redemption of the mortgage and to

get possession of the suit land.

6] Both the Trial Court and the Appellate Court have considered and appreciated the entire evidence on record in its proper perspective and arrived at the concurrent finding of fact. No substantial question of law having been raised in this Second Appeal, the Second Appeal stands dismissed.

7] In view of dismissal of the Second Appeal, nothing survives in the Civil Application, hence stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]