

Sequeira

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

***SECOND APPEAL NO. 804 OF 2015
Along with
CIVIL APPLICATION NO. 1692 OF 2015***

Ms.Gunwati W/o Govind Gujar
(Deceased through heir)

1 A. Dipchand Tarachand Shah-
Since deceased through heirs-

1 A(1) Sandip Dipchand Shah and others .. Appellants
Vs

Mr.Narhari Kashiba Yedke and others .. Respondents

Mr.Ashutosh M.Kulkarni, for Appellants.

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

Oral Order :

Heard learned counsel for the Appellant.

2. The Appellant – original Plaintiff is aggrieved by the judgment and order passed by the District Judge, Sangli dated 5 February 2015 in Regular Civil Appeal No.171 of 2014 allowing the appeal filed by the Respondent-Defendants and setting aside the decree granted in favour of the Appellant by learned Civil Judge, Tasgaon dated 7 May 2014.

3. The suit was filed by the Appellant for recovery of possession of a portion of the land described in the plaint in respect of the properties specified therein. The suit was filed simplicitor on the premise that Defendants have made encroachments on 8 Ares of land on the northern side, and possession of the suit property was sought.

4. The learned District Judge held that the Respondents were in possession of the suit land pursuant to proceedings concluded under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and that it cannot be said they are encroachers or illegally in possession. No exception can be taken to this view taken by the learned District Judge. The Appellants have not challenged the proceedings under the Act of 1947. The suit was filed only on the premise that Respondents are encroachers and have no legal right. Once the Respondents were placed in possession of the suit properties pursuant to the proceedings under the Act of 1947, they cannot be termed as encroachers. If in case of challenge is levied by the Appellants to the conclusion of proceedings under the Act of 1947 and if the scheme framed under the Act of 1947 is held in their favour, then the Plaintiff can be stated to have a legal right to recover possession from the Respondents.

5. In the circumstances, no substantial question of law arises. Second Appeal is dismissed. Since the learned District Judge has

founded its conclusion on the premise that conclusion of proceedings under the Act of 1947 cannot be questioned, needless to state that, in case such proceedings are taken in future, if permissible in law, they will be considered independently.

6. In view of the dismissal of Second Appeal as above, the Civil Application stands disposed of.

(N.M.Jamdar, J.)