

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

**CIVIL APPLICATION NO. 1534 OF 2017
IN
SECOND APPEAL NO. 454 OF 2018**

Shobha Arun Gaikwad & Ors. ..Applicants

v/s.

Ashalata Kisan Ghodke ..Respondents

Mr.Tushar Sonawane for the Applicant/Appellant
Mr. Swapnil Walve for the Respondent Nos.1 to 4.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 11th DECEMBER, 2018.**

P.C.

1. Heard.
2. The appellants herein were the original plaintiffs in the suit. They had filed a suit for preemption, declaration and for perpetual injunction that the sale deed dated 03.02.2009 is null and void.
3. The dispute in the said suit was in respect of the property under Gut Nos. 299, 297, 292, 291, 286 and 285. The appellants-plaintiffs have claimed that the said properties were ancestral properties, and

that after demise of their father Motiram, the properties were jointly owned and possessed by the plaintiffs and the respondent nos.1 and 2 i.e. the Original defendant nos.1 and 2. The plaintiffs had claimed that the properties were not partitioned. The grievance of the plaintiffs was that the defendant nos.1 and 2 had executed a sale deed in respect of the said property in favour of the defendant nos.3 and 4 even though the plaintiffs had preferential right to purchase the said property. The plaintiffs had alleged that the said sale deed was null and void. The plaintiffs had claimed that they were in possession of the property and that these defendants were trying to disturb their possession. The plaintiffs therefore sought relief of declaration and perpetual injunction.

4. The defendant contested the suit and had claimed that the properties were partitioned and that they were in possession of the suit properties. The defendants had denied that the plaintiffs had preferential right to purchase the suit property.

5. Upon, appreciating the evidence on record, the learned trial Judge decreed the suit partly. The learned trial Judge granted relief of declaration but rejected the prayer for perpetual injunction on the

ground that the plaintiffs had failed to prove exclusive possession of the suit property and that the properties were in joint possession of the plaintiffs as well as the defendants.

6. It may be mentioned that though the defendants had claimed that they are in exclusive possession of the suit property, they had not filed any cross objections as regards the finding on possession. The learned Counsel for the appellant-plaintiffs has also drawn my attention to the deposition of DW1 wherein she has admitted that the plaintiffs had not handed over possession of the suit property to the purchasers. The records thus prima facie indicate that the plaintiffs are in joint possession of the suit property. It is also pertinent to note that, this Court by Order dated 11th October, 2017 had directed the appellants and well as the respondents to maintain status quo in respect of the suit property. The said order is in operation till date.

7. Considering the above facts and circumstances, both the parties are directed to maintain status quo in respect of the suit property till disposal of the appeal.

8. Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)