

Sequeira

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

SECOND APPEAL NO. 476 OF 2015

Mr.Suryakant Chandrakant Hande .. Appellant
Vs
Ms.Kanizbano Md. Hanif Shaikh and another .. Respondents

Mr.G.S.Godbole i/b Mr.Sarang S.Aradhye, for the Appellant.

***Coram : N.M.Jamdar, J.
Date : 29 January 2018.***

Oral Order :

By this Appeal, the Appellant-original Plaintiff is aggrieved by judgment and order passed by the learned District Judge, Solapur, dated 16 September 2013 allowing the appeal filed by Respondents-Defendants and setting aside the judgment and decree passed by the learned Civil Judge, Karmala dated 27 March 2012.

2. The suit was filed by the Appellant-Plaintiff seeking a decree of perpetual injunction contending that the Appellant-Plaintiff is owner of the suit property by virtue of a sale deed dated 10 September 2003 and the Respondents-Defendants, having no right in the suit property, are disturbing the possession of the Appellant.

3. The learned counsel for the Appellant submitted that the Courts, have needlessly commented upon the title of the Appellant and has held that it is for nominal purposes. The learned counsel submitted that the Defendants had produced no evidence as regards the aspect of possession and the oral evidence was adduced by the Appellant demonstrating his possession. The learned counsel submitted that the entire discussion of the learned District Judge is regarding the validity of the sale deed in favour of the Appellant and the finding on possession rendered by the learned Civil Judge ,is reversed without any reason.

4. The arguments have no merit. The suit is primarily filed seeking an order of injunction. One of the foundation to ask for such relief is the possession of the Plaintiff. This aspect is factual. Even assuming the deed in favour of the Appellant is valid, the question still remains whether the Appellant is in possession of the suit property and whether the Appellant requires an order of injunction. As regards the evidence on the aspect of possession except, comments on the evidence produced by the Respondent-Defendants, no documentary evidence is shown demonstrating possession of the Appellant, except the deed of 10 September 2003. The learned District Judge has found that the evidence in respect of possession of the Appellant was not adequate. This finding is in assessment of facts.

5. The finding of the learned District Judge that the Appellant is not in possession and consequently, does not require any order of injunction is confirmed by the conduct of the Appellant in this Court. The relief of injunction is an emergent relief. If a party is really in possession and genuinely requires protection from dispossession, it will be anxious to secure such a protection. No interest has been shown by the Appellants. This Second Appeal was filed on 13 November 2013. The office objections were not removed despite of various opportunities. Ultimately the appeal was dismissed for non-removal of office objections by the Registrar on 30 July 2014. By showing indulgence, this order was set aside by the learned Single Judge on 8 May 2015. Thereafter on 6 June 2016, at the request of the Appellant, the appeal was adjourned. On 17 January 2017, the appeal was adjourned in absence of the Appellant by way of last chance. On 6 February 2017, it was again adjourned at the request of the Appellant making it clear that no further accommodation will be granted. On 9 January 2018, again time was applied for by the Appellant and appeal was adjourned to 23 January 2018, by way of last chance. On 23 January 2018, none was present therefore it was kept for dismissal today. It is today, after five years of filing the appeal, when it was adjourned for dismissal that the Appellant has pressed the appeal on merits contending that Appellant requires an order of injunction. As stated earlier this

conduct of the Appellant, confirms the factual finding recorded by the learned District Judge that the Appellant does not require any order of injunction. There is no error committed by the learned District Judge. No substantial question of law arises. Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)