

Sequeira

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

***SECOND APPEAL NO. 313 OF 2016
Along with
CIVIL APPLICATION NO. 583 OF 2016.
(For stay)***

Mr.Govind Mahadu Gangurde .. Appellant
Vs
Ms.Gangibai Amruta Chaudhari .. Respondent

Mr.Manoj A. Patil, for the Appellant.

Mr.Vikram Sathe i/b Mr.Ganesh Bhujbal, for the Respondent.

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

Oral Order :

The Appellant / original Plaintiff has filed the Second Appeal being aggrieved by the judgment and order passed by the learned District Judge, Nashik dated 8 October 2015. The learned District Judge, by the impugned order allowed the appeal and set aside the judgment and decree passed by the learned Civil Judge, Kalwan dated 22 October 2008.

2. The Appellant had filed a suit claiming that the Appellant has become owner of the suit property by way of adverse possession and

for injunction. The learned Civil Judge did not grant the declaration as prayed for, however decreed the suit in respect of injunction. The learned District Judge after assessment of evidence came to the conclusion that the Appellant is not in possession of the suit property.

3. The question as to whether the Appellant is in possession of the suit property is essential question of fact. Unless there is perversity in appreciation of evidence or an important piece of relevant evidence has not been considered, a mere re-appreciation of evidence is not permissible under section 100 of the Code of Civil Procedure.

4. The learned counsel for the Appellant placed heavy reliance on a statement made by the Respondent in the appeal memo in the District Court. The learned counsel submitted that, by referring to the possession of the Appellant as in illegal possession, the Respondent has admitted possession of the Appellant. This submission has no merit. The appeal memo, which is in Marathi, has six single line sentences. The appeal memo is drafted by an advocate and the Respondent who is sixty year old lady has affixed her thumb impression. The appeal memo is extremely sketchy and from this one line statement in appeal memo, the entire findings of fact, cannot be reversed.

5. The learned counsel for the Appellant then submitted that the Respondent has admitted in the cross-examination that the Appellant is in possession. The cross-examination will have to be seen in its entirety. Though it is stated in one place that at the time of filing of the suit, the Appellant was cultivating, in the same paragraphs three sentences occur, which emphasize that the Appellant was not in possession. Therefore, from one stray sentence which is out of sync from the entire cross-examination, it cannot be established that the Appellant was in possession.

6. Furthermore, the Appellant being Plaintiff and was seeking an order of injunction, burden was upon the Appellant to demonstrate by placing cogent material on record to demonstrate his possession. No documentary evidence has been produced on record to demonstrate the possession of the Appellant nor any neighbours have been examined. Therefore, only on the basis of a stray statement in the cross-examination and in appeal memo, the findings rendered by the learned District Judge, cannot be reversed. Second Appeal involves no question of law and raises only questions of facts. Second Appeal is dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)