

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1563 OF 2015

IN

SECOND APPEAL NO. 834 OF 2015

Shri. Haridas Hanmant KadamApplicant

V/s.

Shri. Shankar Shripati Kadam
(since deceased thr. Lrs.)

and Ors.

....Respondents

* * * *

Mr. Pradeep S. Gole, Advocate for the applicant.

Mr. M.S. Athalye, Advocate for respondents no.1A to 1C and
3, 2A to 2C.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 4th April, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The Second Appeal is admitted by this Court. Vide order dated 6th October, 2015 passed in Civil Application No. 1563 of 2015, ad-interim relief in terms of prayer clause (b) has been granted which reads as under :

“(b) that pending the hearing and final disposal of the present application, be restrained the Respondents-Defendants, their agents, servants or any person claiming through them from obstructing, interfering and disturbing peaceful possession of the Applicant-Plaintiff over the suit property.”

3. Facts of the case in brief are; that the appellants' plaintiffs' prayer for specific performance of contract was granted against which the Appeal was preferred by the defendant. The Appellate Court reversed the decree and thus this Second Appeal by the plaintiff.

4. The suit contract was executed and registered on 23rd December, 1988 and the possession receipt was executed simultaneously. The learned First Appellate Court held that, though a photocopy of the possession receipt was produced but since no permission was sought to lead

secondary evidence, it declined to rely on possession receipt. The learned Counsel appearing for the respondent, has taken me through the evidence of D.W.5 and the evidence of the plaintiffs' father, who admitted in the evidence that on 17th August, 1991, the plaintiff was not in possession of the suit land.

5. Be that as it may, since this Court while granting the ad-interim relief, passed a speaking order and admitted the Second Appeal in October, 2015, I am not inclined to vary or modify the order, after four years.

6. The Civil Application is allowed in terms of prayer clause (a). Hearing of the Appeal is expedited.

(SANDEEP K. SHINDE, J)