

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 603 OF 2017****ALONGWITH****CIVIL APPLICATION NO. 1128 OF 2017****IN****SECOND APPEAL NO. 603 OF 2017****Shankar Ganpat Solgaonkar****..... Appellant****VERSUS****Dattatray Bhikaji Bakalkar & Anr.****..... Respondents**

Mr.Sanskar Marathe for the Appellant.

Mr.Arvind Kundekar for the Respondent no.2.

CORAM : R.D. DHANUKA, J.**DATE : 27th AUGUST, 2019****P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the judgment and decree passed by the learned District Judge-1, Ratnagiri dismissing the appeal preferred by the appellant and upholding the judgment and decree passed by the learned Civil Judge, Junior Division, Rajapur in Regular Civil Suit No. 34 of 2007 filed by the respondent (original plaintiff) *inter alia* praying for injunction against the petitioner.

2. Both the parties led oral and documentary evidence before the learned trial judge. The onus was cast on the defendant to prove that he was in possession. It was the case of the plaintiff that the defendant was disturbing the possession of the plaintiff in the suit premises. The learned trial judge has rendered finding of fact that the defendant had failed to prove his possession in the suit premises and granted

permanent injunction against the defendant.

3. The Appellate Court after considering the evidence independently has confirmed the findings rendered by the learned trial judge and has held that the defendant has failed to prove his possession in respect of the suit premises.

4. The findings rendered by the two courts below being not perverse, do not warrant any interference in this second appeal. No substantial question of law arises in this second appeal.

5. Learned counsel for the respondent states that if the appellant herein succeeds in the tenancy proceedings which are pending before the Sub-Divisional Officer under the provisions section 70B of the Maharashtra Tenancy Agricultural Lands Act, 1948, the appellant at that stage can apply for possession of the property by filing appropriate proceedings. He further states that during the pendency of the said proceedings and for a period of two weeks thereafter, if the said proceedings are decided against the appellant, his client would not create any third party rights or will part with possession in respect of the suit property. Statement is accepted.

6. With the aforesaid clarification, second appeal is dismissed. No order as to costs.

7. In view of the dismissal of the the second appeal, Civil Application No. 1128 of 2017 does not survive and is accordingly dismissed. No order as to costs.

[R.D.DHANUKA, J.]