

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

SECOND APPEAL NO.681 OF 2016

Mr. Chindha Dada Sarode ...Appellant

V/s.

Mr. Punja Dada Sarode & Ors. ...Respondents

....

Mr. R. N. Gite a/w Ms. Divya Parab, advocate for the appellant.

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CORAM : M.S.KARNIK, J.

DATE : 18th JUNE, 2019

P.C. :

1. This appeal is filed by the original plaintiff challenging the judgment and order dtd.27/10/2015 passed by the Ld. District Judge-1, Malegaon, District Nashik. The appeal was preferred to the first appellate court against the judgment and decree passed in R. C. S. No.207/05 by the Ld. Civil Judge (S. D.), Malegaon, District Nashik.

2. It is the case of the appellant that the appellant and the respondent No. 1 are real brothers. There is dispute in respect of the agricultural land admeasuring 2 Hectar 31R at Block No.123 at Mouje Krantinagar, Tal. Nandgaon, District Nashik. According

to the appellant, he is the owner and in possession of the suit property since the year 1951.

3. It is the submission of the learned counsel for the appellant that though the property came to his share by way of a partition, on the basis of the order passed by the Tahasildar under section 63A of the Bombay Tenancy and Agricultural Lands Act, 1948, the respondent No. 1 claims to have purchased the same by paying the purchase price and now claims to be the owner and in possession. The appellant has prayed that the order passed by the Tahasildar be declared as illegal, null, void and not binding on him and claimed the relief against the appellant not to obstruct his possession over the property.

4. It is not in dispute that during the pendency of the appeal and during the course of argument before the court below the appellant restricted his claim to grant of permanent injunction.

5. Though the appellant claimed to be in possession of the property, the evidence on record especially the cross-examination of the appellant, would indicate that he has admitted that the respondent No. 1 is in possession of the suit

property. Merely because the defendant did not enter into the witness box, that would not by itself entitle the appellant to claim the relief of injunction. The appellant has to prove by cogent evidence that he was in possession of the suit land. In tenancy proceedings filed under section 63A of the Bombay Tenancy and Agricultural Lands Act, 1948, it is the respondent No. 1 who succeeded. Respondent No. 1 paid the purchase price and thus became the owner of the property. The orders passed under the Tenancy Act have attained finality.

6. I have gone through the findings recorded by the courts below. I do not see any reason to interfere with the concurrent findings recorded while refusing the relief of permanent injunction in favour of the appellant.

7. In my opinion, the appeal does not involve any substantial question of law. The Second Appeal is therefore dismissed.

(M.S.KARNIK, J.)