

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 826 OF 2016
ALONGWITH
CROSS OBJECTIONS NO. 13543 OF 2019

Shri. Gurunath Javu PatilAppellant
V/s.
Shri. Madhukar Lalu Dhasade
and anr.Respondents

* * * *

Mr. Anilkumar K. Patil, Advocate for the appellant.

Mr. Sanjay S. Patil, Advocate for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 2nd May, 2019.

P.C. :

1. Heard learned counsel for the parties.
2. Predominantly, the challenge is to the finding of facts rendered by both the Courts which held that the

respondents-original plaintiffs were in possession of the suit land on the date of institution of suit. Thus, by decree of perpetual injunction, defendant is prevented from disturbing possession of the plaintiffs over the suit land.

3. The learned trial Court declined to grant declaration of title, as sought by the plaintiffs. The decree of the trial Court is confirmed in the Regular Civil Appeal.

4. The appellant-defendant would claim right in the suit property through his adopting mother who allegedly executed a Will in his favour. The appellant, however, could not prove his adoption in absence of deed of adoption or otherwise. D.W.2-Santosh Bhau Dhasale did not support the defendant on the point of adoption and will as he stated in is cross-examination that, the Will of Raibai (adopting mother of the appellant) did not have his signature as an attesting witness. The Will executed by his adopting mother has not been proved for want of attesting witness in terms of Section 68 of the Evidence Act.

5. In that view of the matter, the Appeal does not

give rise to any substantial question of law. The Appeal is dismissed.

6. The respondents (original plaintiffs) have filed Cross-Objections in this Second Appeal. The learned trial Judge, as well as, the Appellate Court declined to grant decree of declaration of title sought by the plaintiffs. It is against these findings, the respondents have preferred Cross-Objections.

7. The respondents are seeking a declaration of their title to the suit land through their predecessor who was a tenant in the suit land on the Tillers day. It, however, appears, that respondent could not produce anything on record that either they or any persons through them have had applied for Certificate under Section 32G of the Bombay Tenancy and Agricultural Lands Act or that they were granted 32(M) Certificate under the said Act by the concerned Authority. The Courts below, therefore correctly declined to grant the declaration as sought. All that can be said is that, the respondents herein are at liberty to adopt

appropriate proceedings for protecting their rights in the suit land which flow out of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The rights of ownership claimed by the respondents since flow out of the provisions of the Bombay Tenancy and Agricultural Lands Act, the Courts below have rightly refused to decide the said issue. In the result, the Cross-Objections filed by the respondents is dismissed.

(SANDEEP K. SHINDE, J)