

DDR

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

SECOND APPEAL NO. 126 OF 2015

Vajir Tajuddin Gavandi ..Appellant
vs.
Mahammadhusen Amin Gavandi ..Respondent

....

None for the appellant.
Shri A.A. Shinde h/f. Shri Rahul Kulkarni for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 15th OCTOBER, 2019

P.C. :

None for the appellant.

2. This Second Appeal had appeared for admission yesterday. As no one appeared yesterday on behalf of the appellant I heard learned counsel for the respondent. Only by way of indulgence so as to enable the appellant an opportunity to make his submissions the matter is listed today under the caption for “passing orders”.

3. The Appeal is of the year 2015. With the assistance of learned counsel for the respondent I have gone through the Appeal Memo and the orders passed by the Courts below.

4. The appellant is the original plaintiff. He had filed the suit for permanent injunction restraining the defendant from obstructing his possession over the suit property. According to the plaintiff, the suit property was owned by Indumati Rani Sarkar and as per her consent since 1987-88 the plaintiff is in settled possession over the suit property. The plaintiff in his deposition admitted that after the State Government's name is recorded in the record of rights, Indumati Rani Sarkar had no concern with the suit property. Moreover, it was specific case of the plaintiff that the permission of Indumati Rani Sarkar was obtained in the year 1987-88. In his deposition the plaintiff admits that Indumati Rani Sarkar died in the year 1971 and therefore the Courts below have recorded that Indumati Rani Sarkar having died in the year 1971, the plaintiff's case that he is in settled possession over the suit property by virtue of the

permission granted by Indumati Rani Sarkar cannot be accepted. Moreover, the plaintiff himself admitted that the land in question is owned by the Government. The plaintiff further admits that he has filed the suit against the State Government for permanent injunction and not to remove the encroachment. If in these circumstances the Courts below have come to a conclusion that the plaintiff has no legal right to occupy the suit property and hence he is not entitled for permanent injunction, I see no reason to interfere with the concurrent findings of fact recorded by the Courts below. The present Appeal does not involve any substantial question of law. The Appeal is dismissed.

(M.S.KARNIK, J.)

Diksha
Rane

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