

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

**SECOND APPEAL NO. 625 OF 2018
WITH
CIVIL APPLICATION NO. 1442 OF 2018**

Uttam Daji Shete	... Appellant
Versus	
Vasant Krishna Kumbhar	... Respondent

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Mr. Dilip Bodake for the Appellant.
Mr. Girish Agrawal for the Respondent.

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CORAM : SANDEEP K. SHINDE, J.
DATE : 17th JANUARY, 2019.

P. C.:

1. This appeal is preferred by the defendant in Regular Civil Appeal No. 27 of 2017. The suit No. 163 of 2002 was filed for possession and mandatory injunction. The suit property is Block No. 549 and construction made thereon, which is more particularly described in paragraph Nos. 1A and 1B of the plaint.

2. Upon appreciating the evidence the suit was decreed by the trial Court and the defendant was directed to remove the shed raised by him in the suit property. The decree of the trial Court was confirmed in Regular Civil Appeal No. 27 of 2017. It is against the decree of the appellate Court the defendant has preferred this Second Appeal.

3. Heard learned Counsel for the parties.

4. Before dealing to the arguments of the appellant, it may be stated that the Regular Civil Suit No. 460 of 1994 (for short “the first suit”) was filed by the plaintiff in the present proceedings against the appellant and his father Daji Rama Shete for perpetual injunction in respect of the same property which is subject matter in the present proceedings. The first suit was decreed on 31st December, 1998 whereby defendant Nos. 1 and 2 were restrained from obstructing the peaceful possession of the plaintiff over the suit property. The appellant in the present appeal was the original defendant No.2 in the first suit with his father Daji Rama Shete who was defendant No.1. The decree of perpetual injunction passed in the first suit has attained finality and is binding on the present appellant.

5. Regular Civil Suit No. 163 of 2002 was filed by respondent No.1 plaintiff, seeking mandatory injunction to remove the construction made by the appellant over the suit property. Suit was decreed and it was confirmed in the first appeal.

6. Appellant would assert his possession in the suit property as a tenant. Since, the defendant had raised the issue of tenancy, the Courts below had referred the issue to the revenue authority

in view of the provisions of Section 70 of the Bombay Tenancy and Agricultural Lands Act, 1948. It appears that the appellant did not remain present before the Tahsildar except on one occasion and therefore the Tahsildar concluded that the defendant was not interested in establishing his tenancy in the suit property. This report of the Tahsildar has not been challenged and therefore the defendants cannot agitate the issue and claim the possession in the property, as tenants.

7. It is contended by the learned Counsel for the appellant that both the courts below have failed to examine plaintiffs right to claim possession over the suit property. It is contended that the plaintiff is asserting his right over the suit property only on the basis of mutation entry which is not a title document and therefore in absence of any other evidence the plaintiff has had no right to seek relief of mandatory injunction against the defendant.

8. In my view, the submissions of the appellant deserve no consideration. It may be stated that there is already a decree of perpetual injunction passed by the Court of competent jurisdiction against the appellant herein in the year 1998, which admittedly has attained finality. The appellant thus has no right

to claim either as tenant or otherwise. The submissions of appellant are misconceived and therefore rejected.

9. In the given set of facts I do not see any merit in the appeal. The appeal does not give rise to any substantial questions of law. The appeal is dismissed. Civil application is also disposed of.

10. At this point of time learned Counsel for the appellant seeks extension of time for removing the construction made by him on the suit land. Appellant was called upon to file an undertaking to that effect. The learned Counsel expressed his inability to give such an undertaking for want of instruction. The request for extension of period is hereby rejected.

(SANDEEP K. SHINDE, J.)