

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 587 OF 2015
WITH
CIVIL APPLICATION NO. 1305 OF 2015
IN
SECOND APPEAL NO. 587 OF 2015**

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Maruti B. Khatal ... Appellant/Applicant

vs.

Shrimant Dattoba Ghorpade and Ors. ... Respondents

Mr. Nikhil Rajeshirke a/w Sandesh Daptare a/w Saurabh Rajeshirke
a/w Tejasri Salvi for the Appellant/Applicant.

Mr. Kiran Kumar Phakade for Respondent Nos.1 and 2.

CORAM : GAURI GODSE, J.

DATED : 12th FEBRUARY 2025

ORDER:

1. Heard learned counsels for the parties.
2. This appeal is preferred by defendant no.1 to challenge the judgment and decree passed by the first appellate court. The suit filed by the respondent nos.1 and 2 to seek injunction restraining the defendants from obstructing the plaintiffs' possession over the suit property was dismissed by the trial Court. In an appeal preferred by the plaintiffs, the suit is decreed and the defendants are restrained from obstructing plaintiffs' possession over the suit property. Hence,

this second appeal by defendant no.1.

3. Learned counsel for the appellant submits that plaintiffs' father had executed a receipt in favour of defendant no.1 agreeing to transfer the suit property in his name. He submits that the receipt was produced at Exhibit 64. He further submits that the receipt confirms that defendant no.1 is already in possession of the suit property. He further submits that the attesting witness to the receipt was examined by defendant no.1 to support his contention that he is in possession of the suit property, which is confirmed by plaintiffs' father by executing receipt. The receipt is produced at Exhibit 64. He submits that only based on the revenue entries, the first appellate court believed the plaintiffs' case of being in possession and disbelieved defendant no.1's case though there was receipt produced on record, which was supported by oral evidence. He, therefore, submits that the second appeal would raise substantial questions of law on the point of incorrect appreciation of the evidence on record and more particularly Exhibit 64.

4. I have perused the papers of the second appeal. The suit is filed on the ground that plaintiffs are owners of the suit property i.e. Gat No.300/2. Defendant no.1 opposed the suit claim on the ground that he is in possession of the suit property and is cultivating the

same. The source of possession pleaded by defendant no.1 is receipt, which is produced at Exhibit 64. The execution of the receipt and the contents are disputed by the plaintiffs.

5. The first appellate court has thoroughly examined the oral evidence. The first appellate court held that the receipt at Exhibit 64 relied upon defendant no.1, did not indicate that the plaintiffs' father had handed over possession of the suit land to defendant no.1. The first appellate court has examined the revenue record, which indicates that plaintiffs were in possession of the suit property. The admissions given by defendant no.1 and his witnesses are referred to by the first appellate court. Contrary stand taken by defendant no.1 regarding his source of possession is also considered by the first appellate court. The first appellate court observed that in the oral evidence defendant no.1 admitted that possession was handed over to him by original landlord of the suit property. Thus, by examining the documentary as well as oral evidence on record, the first appellate court held that the plaintiffs proved to be in possession of the suit property.

6. Learned counsel for the appellant has placed on record receipt at Exhibit 64. A perusal of the receipt indicates that the same is executed in respect of Survey No.66/1. There is nothing on record

to relate this receipt to the suit property described by the plaintiffs. The first appellate court by examining the revenue record held that the receipt does not show that possession of suit land is handed over to defendant no.1 by the plaintiffs' father. The first appellate court being a last fact finding Court, has thoroughly examined the evidence on record and held that plaintiffs are in possession of the suit property and defendant no.1 failed to prove that he was any time put in possession of the suit property.

7. The grounds raised on behalf of the appellant would require re-appreciation of the evidence on record, which is not permissible under Section 100 of CPC. There is no illegality or perversity in the reasons recorded by the first appellate court.

8. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of the dismissal of the second appeal, civil application is disposed of as infructuous.

(GAURI GODSE, J.)