

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.476 OF 2009

Shri Ratikant S. Patil
& Anr., .. Appellants

V/s.

Shri Vivek M. Donage .. Respondent.

WITH

SECOND APPEAL NO.477 OF 2009

Shri Ratikant S. Patil & Anr., .. Appellants.

V/s.

Shri Mahadeo S.Donage & Anr., .. Respondents.

Shri A.A.Kumbhakoni i/b. Shri T.D.Deshmukh, for Appellants.
Shri R.S.Apte, Sr. Advocate i/b. Shri A.A.Garge for Respondent.

CORAM: R.S.MOHITE, J.
DATED: 26th FEBRUARY, 2010.

P.C.:

1. Since both these Appeals arise out of common facts, the same are being disposed off by this common order.

2. Second Appeal No.476 of 2009 arises out of Civil Suit No.163 of 1994, in which the Applicant was the original Plaintiff. The present Respondent had also filed separate

Srj

suit being Regular Civil Suit No.164 of 1994. Both the suits were for the relief of injunction. The suit land were two plots bearing nos. 7 and 8. Plot No.7 belonged to Mahadeo Donage and plot no.8 belonged to Mahadeo Donage and his mother. By a sale deed dated 15th November, 1979, both these plots were sold by Mahadeo and his mother in favour of one Shri Sangappa. Sangappa executed power of attorney dated 16th November, 1979 in favour of Mahadeo and by a sale deed dated 26th May, 1994, Mahadeo sold these properties to his son Vivek who was Defendant No.2 in R.C.S.No.163 of 1994. The document in favour of Defendant No.2 came to be registered on 29th July, 1995. While document was pending for registration, by a separate sale deed executed on 7th June, 1994 and registered on the same date, Sangappa to be sold the suit property to the Plaintiff in R.C.S. No.163 of 1994.

3. The Trial Court dismissed the suit filed by the Applicant/Plaintiff and granted the injunction as prayed for by the Respondent in R.C.S.No.163 of 1994. The two suits were disposed off by a common judgment and order and the two appeals filed before the First Appellate Court were also disposed off by a common judgment and order. The First Appellate Court confirmed the findings of the trial court and dismissed the appeals.

4. From the aforesaid circumstances, it is clear that both the courts have come to a conclusion that it was Defendant No.2 in R.C.S.No.163 of 1994, who was in ultimate possession and not the Plaintiff in the said suit. That question essentially is a question of fact.

5. The counsel appearing for Appellant further pointed out on admission in the cross examination of Mahadeo, Defendant No.1 in R.C.S.No.163 of 1994, to the effect that he had handed over possession to Sangappa when the sale deed dated 16th November, 1979 was executed. That he had further admitted that Sangappa never granted possession to the Defendant No.1 Vivek. It was contended that since these admissions were not given sufficient weightage, the substantial question of law arose.

6. The record, however, shows that after the power of attorney dated 16th November, 1979 was executed, Mahadeo developed the property in pursuance of the power granted to him. There is no cross examination on this aspect. Defendant No.1 Mahadeo further states in Examination-in-Chief, that at the time of execution of the sale deeds , he handed over possession to Defendant No.2. There is no cross examination on this aspect also. Apart from this, the Appellant did not examined his own vendor Shankarappa.

Shankarappa was thus not made available for cross examination by the Defendant in his suit. It was contended that the sale deed dated 26th May, 1994, did not record the grant of possession to Shankarappa. On perusal, I find that there it clearly mentions that possession has been taken by Vivek.

6. In view of this, no question of interpretation of any document is involved. In my view, there is no substantial question of law involved in tis appeals.

7. Hence, both the Second Appeals are rejected and disposed off.

CIVIL APPLICATION NO.1359 OF 2009

WITH

CIVIL APPLICATION NO.1554 OF 2009

1. Since both Second Appeals are disposed off, Civil Applications also disposed off as they do not survive.

(R.S.MOHITE, J.)