

Jagannath Kashinath Patil

Vs

Narayan Balugaikar

Civil Appeal No. 1205 of 1980

(K. Ramaswamy, K. Venkataswami, G. B. Pattanaik JJ)

24.09.1996

ORDER

1. This appeal by special leave arises from the judgment of the Single Judge of the Bombay High Court made on 30-1-1979 in Second Appeal No. 553 of 1971.
2. The admitted facts are that the respondent filed suit against the appellant for removal of construction and to restrain him from interfering with his possession and enjoyment of land admeasuring 50' x 30' marked by letters "A, B, C & D" in the sketch (Exc. 44) claiming title to the said plot. The trial court decreed the suit; on appeal it was reversed. In the second appeal, the High Court set aside the decree of the appellant court and confirmed the decree of the trail court. Thus, this appeal by special leave.
3. It was not disputed during the cross-examination of the witnesses that the property originally belongs to Rukmanibai, the maternal grandmother of the respondent who had executed possessory mortgage in favour of one Pukharaj and the said Pukharaj had given back the mortgage deed and also delivered possession of the house to the respondent. The High Court, therefore, has taken into consideration all these factual matrix and concluded that the respondent-plaintiff has succeeded to the estate of his grandmother and possession was given to him by the mortgagee and he remained in possession of the property. The appellant had constructed one room and w.c. therein for convenient enjoyment of is property. Though the appellant had set up his own title, he has not filed any proof of title except his oral testimony. The appellate court has concluded that the mortgage does not create any title and proper evidence should have been produced to establish title of the respondent and on that premise set aside the judgment and decree of the trail court.
4. Shri Joshi, learned counsel for the appellant, contended that the view of the appellate court on the above facts is correct in law and the High Court was not justified to interfere with the finding of fact recorded by the final court of facts. We find no force in the contention. The plaintiff/respondent having been found as successor to the property from his maternal grandmother and being in possession of the property delivered by Pukharaj, the mortgagee, succession to the estate of grandmother furnished him the title to the property and delivery of possession to him by the mortgage reinforce his lawful title to and legal possession of the property. The respondent is entitled to have the possession retained without any interference as sough for and the injunction granted by the trial court is correct in law. The High Court rightly allowed the second appeal. The appellant is directed to remove the offending structure put up on the said property within a period of three months from today. On default, the respondent will be a liberty to have it removed in execution of the decree and recover the costs incurred therefore from the appellant.

5. The appeal is accordingly dismissed. No costs.