

(2003) 09 BOM CK 0093

In the Bombay High Court

Case No : Civil Revision Application No. 74 of 2003 with C.A. No. 5547 of 2003

Somnath Yawalkar

APPELLANT

Vs

Narhar Malkare and Another

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : (2004) 1 MhLj 1117

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : S.S. Shete, for the Appellant; V.N. Upadhye, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Naik, J.—Learned Advocates for petitioner; so also the respondents are absent.

2. Perused the order dated 10-7-2001 passed by the learned Civil Judge, S. D. Osmanabad by which the learned Civil Judge has allowed the restoration by exercising his power under 144 of the Civil Procedure Code, 1908 and restored possession to the respondent. It is not disputed that the decree passed by the trial Court was confirmed by this Court in Second Appeal i.e. Second Appeal No. 463/1993, after the decree passed by the trial Court, the defendants have lost the possession during pendency of appeal; but in appeal before the learned Addl. District Judge, Osmanabad, the decree was reversed and the suit of the plaintiff was dismissed, which came to be confirmed by this Court in Second Appeal. If the decree by which the plaintiff obtained possession is reversed by the appellate Court, the plaintiff is not entitled to remain in possession. Defendant then gets a right of restitution by taking recourse to Section 144 of Civil Procedure Code. Section 144 permits the party to make an application for restitution. The learned trial Judge was satisfied that the conditions as stated in Section 144 are present and satisfied in the case and accordingly he allowed the application and granted restitution. Once the restitution is granted, neither Appellate Court or Revisional

Court gets jurisdiction to entertain any proceedings nor grant stay to the order of restitution. Considering the law declared by the Apex Court in 1953 SCR Page 559 and the judgment of this Court in (1957)60 Bom.L.R. 487, I find no substance in the present Revision. Revision Application stands rejected. Rule discharged. No costs.

3. Civil Application does not survive. The same stand rejected.