

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

32. SA/478/2012

RUKMINBAI BHAVRAO NAGARE
V/S
RAMKISAN BABURAO KSHIRSAGAR THR. GPA SUBHASH ASARAM KHANDAGALE

Mr. M.P. Kale, Advocate for appellant.

Mr. V.P. Patil, Advocat for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 12th October, 2015.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Suit No. 875/2003, which was pending in the Court of Civil Judge, Junior Division, Aurangabad and also against the judgment and order of Regular Civil Appeal No. 148/2008, which was pending in the Court of District Judge-2, Aurangabad. The suit filed by present respondent - Ramkisan Kshirsagar for relief of injunction against the present appellant, defendant is decided in favour of present respondent. Both the sides are heard.

2. The suit was filed in respect of plot No. 28, which is part and parcel of Survey No. 127 situated at Harsul, Aurangabad. Plaintiff has given boundaries of this plot. It is the case of plaintiff that the suit plot was purchased by him from one

Indubai Chavan under registered sale deed dated 20.11.1998. It is his case that Indubai had purchased this plot from the original owner on 21.9.1992. It is contended that plaintiff had started making construction after purchasing the plot and he had appointed defendant as watchman and she was to supervise the construction and it is the case of plaintiff that he was paying monthly wages to the defendant and plaintiff was visiting the place from his residential place, Vaijapur. It is contended that defendant has no concern of ownership etc. with the suit property, but defendant tried to create obstruction in the construction and cause of action took place in November 2000. It is contended that the defendant then denied the ownership of plaintiff over the suit property. The area of the property is given as 1290 Sq. Fts.

3. The defendant filed written statement and she denied that plaintiff is owner of property. She contended that she purchased the suit property from its owner under registered sale deed on 9.8.1998. It is contended that in the sale deed, by mistake the property was described as plot No. 35, but on 16.12.1998 the vendor gave in writing that the correct number was 28.

4. Issues were framed in the trial Court and both the sides gave evidence. The sale deeds executed in favour of Indubai Chavan and plaintiff were produced and defendant produced the sale deed executed in her favour by the same vendor and she produced a stamp paper on which it was mentioned that plot No. 28 was sold by vendor to defendant, but by mistake, plot was described as plot No. 35 in the sale deed. Witnesses were examined to prove the possession.

5. The suit was filed in the year 2003 and defendant produced some record like connection of telephone of B.S.N.L., connection of electricity which were of 2004 onwards. Tax receipt was also produced.

6. In view of the record of the sale deed which was made in the year 1992 in favour of Indubai, vendor of plaintiff, the Courts below have held that plaintiff is owner of plot No. 28. The copy of development plan was produced and it is not disputed by both the sides. The same property is shown to be sold by Indubai under sale deed of 1998. On the other hand, the same vendor sold plot No. 35 to defendant under sale deed dated 9.10.1998. It can be said that in the year 1998 plot No. 28 was not available with the vendor for selling it to defendant.

Thus, even if the circumstance that correction document is not registered, is ignored, it can be said that no title passed to defendant in respect of plot No. 28.

7. On the basis of aforesaid circumstances, it can be said that defendant was deceived if at all she wanted to purchase the plot No. 28 from the same vendor. It appears that she subsequently gave complaint against the vendor Aher to police. Thus, so far as the point of title is concerned, there is nothing with defendant to show that she is entitled to claim right or interest in this plot. On the basis of oral evidence and other evidence, the Courts below have held that the plaintiff has been in possession of the suit property. It is a finding of fact. In view of these circumstances, this Court holds that there is no material on the basis of which substantial question of law can be formulated.

8. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/