

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 241 OF 2014
WITH
CIVIL APPLICATION NO. 3576 OF 2014**

Manohar S/o Tamanna Suryawanshi,
Age : 61 years, Occu. Agri.,
R/o Badur Tq. Nilanga, Dist. Latur.

...APPELLANT
(original Plaintiff)

versus

1. Bhikaji S/o Kamlakar Kulkarni,
Age: 66 years, Occ. Nil,
R/o: Old Nilanga, Tq. Nilanga,
Dist. Latur.

2. Neeta W/o Bhikaji Kulkarni,
Age: 61 years, Occ. Household,
R/o: Old Nilanga, Tq. Nilanga,
Dist. Latur.

3. Satish S/o Vithalrao Shingade,
Age: 43 years, Occu. Agri.,
R/o :Badur, Tq. Nilanga,
Dist. Latur.

4. Laxman S/o Tamanna Suryawashi,
Age: 51 years, Occ. Agri.,
R/o : Badur, Tq. Nilanga,
Dist. Latur.

...RESPONDENTS
(original Defendants)

.....

Mr. T.M. Venjane, Advocate for appellant
Mr. S.N. Patne, Advocate for respondents No. 1 and 2
Mr. S.B. Gastgar, Advocate for respondent No. 3.

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WITH
SECOND APPEAL NO. 242 OF 2014
 WITH
CIVIL APPLICATION NO. 3578 OF 2014

Manohar S/o Tamanna Suryawanshi,
 Age : 61 years, Occu. Agri.,
 R/o : Badur Tq. Nilanga, Dist. Latur.

...APPELLANT
 (original Plaintiff)

versus

1. Satish S/o Vithalrao Shingade,
 Age: 43 years, Occu. Agri.,
 R/o :Badur, Tq. Nilanga,
 Dist. Latur.
2. Neeta W/o Bhikaji Kulkarni,
 Age: 61 years, Occ. Household,
 R/o : Old Nilanga, Tq. Nilanga,
 Dist. Latur.
3. Bhikaji S/o Kamlakar Kulkarni,
 Age: 66 years, Occ. Nil,
 R/o : Old Nilanga, Tq. Nilanga,
 Dist. Latur.
4. Laxman S/o Tamanna Suryawashi,
 Age: 51 years, Occ. Agri.,
 R/o : Badur, Tq. Nilanga,
 Dist. Latur.

...RESPONDENTS
 (original Defendants)

.....
 Mr. T.M. Venjane, Advocate for appellant
 Mr. S.B. Gastgar, Advocate for respondent No. 1
 Mr. S.N. Patne, Advocate for respondents No. 2 and 3

CORAM : SUNIL P. DESHMUKH, J.

DATED : 2nd DECEMBER, 2015

Order :-

1. Second appeal No. 241 of 2014 is by unsuccessful plaintiff – Manohar Tamanna Suryawanshi. He had instituted regular civil suit by No. 306 of 2003 praying for various reliefs, declaration of ownership,

injunction putting restraint on defendants – respondents herein second appeal No. 241 of 2014 from causing obstruction to the plaintiff's possession over the suit property and cancellation of decree in regular civil suit No. 32 of 1993 and also cancellation of sale-deed dated 06-08-2003 executed by defendant No. 2 – Neeta Bhikaji Kulkarni-respondent No. 2 herein in favour of defendant No. 3 – Satish Vitthalrao Shingade respondent No. 3 herein.

2. Learned counsel for appellant – plaintiff contends that appellant had purchased suit land under registered sale-deed from defendant No. 1- respondent No. 1 in 1994 and had accordingly been put in possession of the same. It was only in 2003, when disturbance to his possession over the suit property had been attempted, he became aware of decree passed in regular civil suit No. 32 of 1993, filed by defendant No. 2 – wife against defendant No. 1- husband (Plaintiff and defendant respectively in regular civil suit no. 32 of 1993) seeking ownership over the suit property and injunction. and that said suit had been decreed on the very day on which it was filed i.e. on 20-01-1993. Defendant No. 2 under the decree in said suit became owner and possessor of the suit property. It was then realized, that defendant No. 2 had parted with land in favour of defendant No. 3 - Satish. Accordingly, cancellation of decree and sale-deed aforesaid had also been sought under the suit.

3. In the suit, defendants No. 1 and 2 had appeared, however, had not filed their written statement and suit proceeded with accordingly.

Defendant No. 3 defended the suit, pointing out that since January, 1993 vendor of the appellant-plaintiff i.e. defendant no. 1 – Bhikaji had no ownership nor possession over the suit property. Pursuant to the decree in regular civil suit no. 32 of 1993, name of present defendant No. 2 came to be entered in revenue record and accordingly sale-deed had been executed by her in favour of defendant No. 3 and pursuant to the same, defendant No. 3 had been put in possession of the suit property. The property was not amenable to be transferred by defendant No. 1. In the circumstances, plaintiff is not entitled to any reliefs claimed.

4. The trial court after scanning the evidence has found that no title can be said to have been passed under sale-deed in favour of plaintiff by defendant No.1, for, defendant No. 1 had no title on the date of sale deed. The trial court has further referred to that though the plaintiff had proved sale-deed in his favour, yet it cannot be said that any title passed to him and nor possession could be delivered to him by defendant No. 1. Additionally, the court considered that the plaintiff himself had filed affidavit in regular civil suit No. 617 of 1994 from which it can be gathered that the present plaintiff was aware of the decree passed in favour of defendant No. 2 by the court and she had been owner in possession of the suit property. Plaintiff had not taken efforts to have mutation caused in his name in respect of the record of the property at any time after sale-deed had been executed in his favour in 1994. The court, on appreciation of evidence, found that defendant No. 2 was owner of the property, accordingly, she had

sold the same to defendant No. 3 in 2003 and put him in possession. Under the circumstances, the suit was dismissed under judgment and order dated 17-07-2009.

5. Against decision dated 17-07-2009 in regular civil suit No. 306 of 2003, appellant herein preferred regular civil appeal No. 42 of 2009 before the district court, which too has been dismissed on 11-03-2014, albeit, appellate court appears to have considered that sale deed cannot be said to have been proved for want of original of the same on record. Accordingly, the matter had been viewed and appeal came to be dismissed.

6. Parallely, it appears that Satish Vithalrao Shingade (defendant No. 3 in regular civil suit No. 306 of 2003) had instituted regular civil suit bearing No. 96 of 2004 against present appellant- defendant in said suit - Manohar Tamanna Suryawanshi and others, seeking perpetual injunction with reference to sale deed executed by Neeta in his favour. Said suit came to be decreed on appreciation of the evidence on record under judgment and order dated 18-07-2009. Appeal by present appellant against the same bearing regular civil appeal no. 43 of 2009 has also failed.

7. Thus, Manohar Tammanna Suryawanshi is before this court in second appeal No. 241 of 2014 in respect of decision in regular civil suit No. 306 of 2003 instituted by him and second appeal No. 242 of 2014 is in respect of the decree in the suit instituted by defendant No. 3 – Satish, bearing regular civil suit no. 96 of 2004.

8. Mr. T.M. Venjane, learned counsel for appellant submits that husband - Bhikaji and wife- Neeta (defendants no. 1 and 2 in regular civil suit No. 306 of 2003) had instituted regular civil suit bearing no. 32 of 1993 and husband - defendant No. 1 had never made present appellant aware of that decree in said suit had been passed in respect of suit property in favour of defendant No. 2-Neeta. He further vehemently submits that so far as possession is concerned, plaintiff had brought evidence of adjoining landholder, who categorically deposed that, it is the plaintiff, who is in possession of the suit property, however, said evidence has been totally ignored by the trial court as well as appellate court. There is no whisper about the same in the judgments delivered by both the courts. He, under the circumstances, submits that whether refusal to grant injunction against defendants can be said to be legally sustainable for non appreciation of evidence adduced on behalf of the appellant. He further refers to that no declaration of cancellation sale-deed executed in favour of appellant by defendant No.1 or any other relief had ever been sought by the defendants. In the circumstances, plaintiff holds title over the suit property under a registered document as required under law since the property transferred in his favour is immovable property.

9. Learned counsel for respondents - caveator Mr. Gastgar submits that there are concurrent findings on the issues. The courts have found that no title can be said to have passed in appellant's favour through sale deed executed by respondent No. 1 – Bhikaji. He submits that recitals in the sale deed with regard to delivery of possession by

respondent No. 1 Bhikaji to appellant is vacuous in the face of decree, which had been previously passed declaring present respondent No. 2 - Neeta to be owner of the suit property along with possession thereof. He submits that the appellant has not been able to place any material on record indicating his possession over the suit property after the sale deed was executed by respondent No. 1 in his favour. Oral evidence of the so-called adjoining land holder in the face of documents on record has little efficacy. The courts below after taking stock of the situation and in the background, and having regard also to preponderance of probabilities have decided that the appellant cannot be said to be in possession of the suit property. It is submitted by him, having regard to that the vendor of the appellant himself had no title to the property, transferee would seldom have better title on such transfer. Non seeking of declaration in respect of execution of sale deed which is *void-ab-initio* would hardly have any relevance. He submits that both the courts had scanned the evidence and on its appreciation have dismissed the suit of the appellant and decreed the suit of respondent No. 3 - Satish. Such appreciation cannot be termed as perverse. In the circumstances, no interference is required in the findings recorded by the courts, he therefore, requests to dismiss both the appeals.

10. So far as other regular civil suit bearing No. 96 of 2004 filed by respondent No. 3 - Satish Vithalrao Shingade is concerned, the courts appear to have considered that pursuant to decree in regular civil suit no. 32 of 1993 in favour of Neeta (defendant No. 2 in regular civil suit No. 306 of 2003) she had become absolute owner of the suit property

and consequently her name came to be recorded in the revenue registers. Pursuant to the same, she had entered into agreement with Satish - defendant No. 3 in regular civil suit No. 306 of 2003 and had sold the suit property to him. Revenue record had been showing respondent No. 1 - Bhikaji not to be in possession and that respondent No. 2 - Neeta can be said to be absolute title holder under decree which had been passed long before. Thus, in respect of sale of the land by respondent No. 1 to the appellant - Manohar, the courts have also considered that there is no record save and except oral testimony of purportedly adjoining land holder and courts have found it difficult to believe that appellant was really put in possession. In the circumstances, suit filed by respondent No. 3 - Satish Vithalrao Shingade for perpetual injunction was properly decreed.

11. Indisputably, chronological factual order is that suit between Bhikaji and Neeta - respondents No. 1 and 2 respectively had been decreed long before the land was purportedly sold by respondent No. 1 - Bhikaji in the year 1994 to present appellant. Pursuant to sale deed no corresponding revenue record had been created showing appellant to be title holder and possessor of the property. Appellant had started making movement only after revenue record started depicting respondent No. 2's name as title holder and possessor of the suit property with reference to decree in 1993. The courts have, therefore, appropriately considered that on the date of sale deed executed in favour of appellant, vendor had no title to the suit property nor it can be said that vendor could have placed the appellant in possession of

the same.

12. On the other hand, Neeta - defendant No. 2 in regular civil suit No. 306 of 2003 appears to be title holder and possessor of the suit property which had not been subjected to challenge at any time before 2003. Although, it is being contended that decree of 1993 could not be realized till transaction had taken place between respondents No. 2 and 3, yet it cannot be lightly ignored that said decree had been previous to the sale deed in favour of the appellant by respondent no. 1 - Bhikaji and on the basis of sale deed in his favour, appellant had not taken any action for making corresponding entries in revenue record. It does not appear that it is not a case of the appellant that any agreement had been executed between him and his vendor before the decree had been passed in regular civil suit No. 32 of 1993. It is not a case that sale of the concerned property was in contemplation, while decree had been passed in said suit. The appellant himself appears to have filed affidavit in regular civil suit no. 617 of 1994, which the trial court has appreciated that it gives indication of that appellant cannot be said to be ignorant of decree in regular civil suit No. 32 of 1993 and respondent No. 2 being in possession accordingly.

13. In the circumstances, the allegation that the said decree had been suppressed by respondent No. 1 Bhikaji while selling land to appellant does not appear to have any substance. Having regard to the facts and the evidence on record and to concurrent findings on facts, as also the material evidence placed on record before the courts, appreciation of the same cannot be termed as perverse. In the circumstances, it

cannot be said that appeals give rise to any substantial question of law.

14. Both the second appeals are not being entertained and as such stand dismissed.

15. In view of dismissal of appeals, nothing survives in civil applications and those stand disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

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