

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

**SECOND APPEAL NO. 80 OF 2012
WITH
CIVIL APPLICATION NO. 1316 OF 2012
IN
SECOND APPEAL NO. 80 OF 2012**

1. Rajendra S/o Rangnath Shewal,
Age: 41 years, occu: Agril.,
R/o Shingi, Tq. Gangapur,
Dist. Aurangabad.

2. Sau Hirabai W/o Rajendra Shejwal,
Age: 38 years, Occu. : Agril.,
R/o Shingi, Tq. Gangapur,
Dist. Aurangabad.

...APPELLANTS
(Ori. Defts. No. 1 & 2)

versus

1. Sau Kamalbai W/o Rangnath Shejwal,
Age: 65 years, Occu: Agril.,
R/o Shingi , Tq. Gangapur,
Dist. Aurangabad.

(Ori. Plaintiff)

2. Arvind S/o Suryabhan Barhate,
Age: 46 years, Occu.: Agril.,
R/o Pimpri, Tq. Gangapur,
Dist. Aurangabad.

(Ori. Defendant No. 3)

3. Narayan S/o Suryabhan Barhate,
Age: 39 years, Occup. Agril.,
R/o: Pimpri, Tq. Gangapur,
Dist. Aurangabad.

(Ori. Defendant No. 4)
...RESPONDENTS

.....
Mr. N. B. Patil, Advocate for appellants
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 21st NOVEMBER 2015

Order :-

1. Appellants before this court are original defendants No. 1 and 2 in regular civil suit bearing No. 03 of 2004 filed by present respondent No. 1 - original plaintiff seeking injunction in respect of suit field

bearing gut No. 132 admeasuring 15 *acres*, 9, *gunthas* of village Shingi, Ta. Gangapur District Aurangabad to the extent of 5 *acres*, 7 *gunthas*, standing in her name since being purchased by her. Suit had been filed by plaintiff seeking injunction against present appellants-defendants No. 1 and 2 and respondents No. 2 and 3, who happened to be defendants No. 3 and 4 and brother of original defendant No. 2 - appellant No. 2 herein. During pendency of the suit, although present appellants had put in appearance, they had not filed their written statement and suit proceeded without their written statement. Defendants No. 3 and 4 - respondents No. 2 and 3 - herein have filed their written statement contending that they are not concerned in any manner with the suit field. However, according to them, suit has been instituted as re-action of demand of the amount made by them to husband of the plaintiff. It has been further contended that plaintiff resides at Ahmednagar, so also other son of plaintiff, namely, Sanjay, from long time is not cultivating the land since he is residing at Ahmednagar.

2. Trial court framed issues with regard to legality of the possession of the plaintiff, about obstruction by the defendants and about demand of amount by defendants No. 3 and 4 - to the husband of plaintiff as well as issue with regard to the suit had been instituted to deter defendants No. 3 and 4 from demanding the amount from the husband of plaintiff. So far as issues about legal capacity of the plaintiff and obstruction to her possession over the suit property are concerned, the same are answered in the affirmative. Issues with regard to payment of

amount by defendants No. 3 and 4 to husband of plaintiff as well as deterring defendants No. 3 and 4 from making demand of amount have been answered in the negative.

3. Upon consideration and discussion of the evidence as had been adduced by the parties, the trial court decreed the suit in respect of suit field from Gut No. 132 having area 5 *acres*, 7 *gunthas* as referred to in the plaint and defendants were restrained from causing obstruction and disturbance to the plaintiff's possession as well as from committing encroachment over the suit property.

4. Intriguingly, it were defendants No. 1 and 2, who preferred regular civil appeal No. 264 of 2006 contending that trial court failed to appreciate evidence in the proper perspective, absence of overtact by the defendants, about absence of independent evidence apart from plaintiff and her husband. According to them, too much importance had been attached to relations between appellants and defendants No. 3 and 4.

5. Appellate court framed points for determination about legality of possession of plaintiff, obstruction by defendants to her possession, entitlement of plaintiff for perpetual injunction and whether judgment and decree of the trial court is proper and legal. All the points have been answered in the affirmative by the appellate court upon consideration and discussion of evidence as had been adduced by the parties and dismissed the appeal under judgment and order dated 23-06-2011.

6. Against judgment and order dated 23-06-2011 in regular civil appeal No. 264 of 2006 passed by District Judge-2, Aurangabad, present second appeal has been purportedly preferred by original defendants No. 1 and 2, who are appellants before the District Court.

7. After hearing learned counsel for the appellants, who tried to contend that plaintiff has not disputed that she had been resident of Ahmednagar and in the circumstances it cannot be believed that she had been in possession of the suit property. He has further contended that brother of appellant No. 1, namely, Sanjay (i.e. another son of plaintiff), who has been stated to have given 5 acres land is also resident of Ahmednagar. Contention of plaintiff of being in lawful possession of the suit property appears to be far away from factual position. Learned counsel further contends that in any case suit had been filed for simplicitor injunction without declaration, and as such, suit was not maintainable.

8. Perusal of judgments of trial as well as appellate courts unequivocally shows that evidence as had been adduced by parties has been discussed by the courts finding that plaintiff to be in possession of the suit land and the appellants fall too short to infuse any substance in their submissions that plaintiff being not in possession, by any cogent material, factual or otherwise. It has to be taken into account in this case that the appellants, who are defendants no. 1 and 2, are son and daughter-in-law of plaintiff, had not filed any written statement nor had adduced any evidence. It is their attempt which in this case appears to be lame one to take crutches of whatever little evidence adduced by

defendants No. 3 and 4. However, it has further to be taken into account that defendants No. 3 and 4 had no connection to the suit property and had miserably failed to establish possession of defendants No. 1 and 2, despite their contention and evidence in their behalf.

9. In the circumstances, findings being on facts and being not perverse, contention with regard to that plaintiff being not in possession is not liable to be interfered with in the present case.

10. So far as other contention advanced purportedly raising substantial question about maintainability of the suit without declaration being not tenable is concerned, without claiming any other relief rendered hollow as there is no dispute about title of the plaintiff over the suit property. It is in that capacity injunction had been sought. There is no prohibition under legal position for institution of such suit nor any law mandates that along with suit for injunction, other relief is obligatory. Law on this point has not been pointed out as canvassed by learned counsel for appellants save and except oral submission.

11. In view of the same, second appeal does not carry any substance much less any substantial question of law and is devoid of merit and stands dismissed as such.

12. Pending civil application also stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

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