

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.378 of 1993

Sou. Indrayani Krishna Kolate,
Age about 56 years,
Occupation – Agriculture and Household,
Residing at Mavadi Supre,
Taluka Purander,
District Pune.

... Appellant/
Ori. Plaintiff.
Ori. Respondent in
Civil Appeal No.723
of 1989.

Versus

Narayan Vishnu Devkar,
Age about 68 years,
Occupation – Agriculturist,
Residing at Mavadi Supe,
Taluka Purandar,
Dist. Pune.

... Respondent/
Ori. Defendant.
Ori. Appellant in
Civil Appeal No.723
of 1989.

Ms Jyoti Chavan, Advocate for Appellant.
None for Respondent.

Coram : R.K. Deshpande, J.
Dated : 30th July, 2015

Oral Judgment :

1. In Regular Civil Suit No.126 of 1984 for grant of permanent

injunction restraining the defendant from obstructing the possession of the plaintiff over the suit property and also damaging the trees on the suit *Tal*, the Trial Court has passed a decree on 1-7-1989 in favour of the plaintiff. In Civil Appeal No.723 of 1989, the lower Appellate Court has reversed the decree passed by the Trial Court on 29-6-1992 and dismissed the suit. Hence, the original plaintiff is before this Court in this second appeal.

2. On 18-1-1994, this Court admitted the matter, framing the substantial questions of law as under :

“(1) Whether the First Appellate Court was justified in allowing the appeal and dismissing the suit once it reached the conclusion that the suit tal appeared to be the part and parcel of the land bearing Gat No.176 owned by the plaintiff and the defendant had encroached on the suit land?”

(2) Whether the plaintiff was not in possession of the suit tal and trees on the date of the suit?”

(3) Whether, in any event, the First Appellate Court ought to have moulded the relief and granted mandatory injunction directing the respondent to remove the encroachment instead of dismissing the suit?”

3. Undisputedly, the plaintiff is the owner of Survey No.176, whereas the defendant is the owner of Survey Nos.175 and 177.

There is a suit *Tal* in between Survey Nos.175 and 176 over which the plaintiff and the defendant are claiming ownership. Before the Trial Court, the plaintiff examined himself at Exhibit 25. The plaintiff also examined the Suveyor at Exhibit 29, who submitted his report at Exhibit 26. The brother of the defendant entered the witness-box.

4. Both the Courts below have accepted the evidence of the Surveyor and the report submitted by him showing that the disputed property falls within the area of Survey No.176 belonging to the plaintiff and the said property is held to be the part and parcel of the land Survey No.176. The lower Appellate Court has reversed the decree passed by the Trial Court in favour of the plaintiff on the ground that the plaintiff has failed to establish the possession over the said property. The property in question being an open land, the lower Appellate Court ought to have taken into consideration the principle that title follows the possession. The findings recorded by the lower Appellate Court are in ignorance of this well-settled principle of law. The same cannot be sustained. The substantial questions of law are answered accordingly.

5. In the result, the second appeal is allowed. The judgment

and order dated 29-6-1992 passed by the lower Appellate Court in Civil Appeal No.723 of 1989 is hereby quashed and set aside and the decree passed by the Trial Court in Regular Civil Suit No.126 of 1984 on 1-7-1989 is restored. No order as to costs.

Judge

pdl