

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.859 OF 2012

Babubhai Bhikabhai Patel ... Appellant

V/s.

Jaganbhai Lalbhai Patel ... Respondent

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Mr.P.R. Arjunwadkar i/b. Prabha Badadare, Advocate for the Appellant.
Mr.B.D. Joshi, Advocate for the Respondent.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 20, 2015.

P.C.

In Regular Civil Suit No.9 of 2005, the trial Court passed a decree on 3rd March, 2010. The operative portion of the Judgment of the trial Court is reproduced below:

“(i) Suit is decreed with cost.

(ii) Defendant, his servants and persons claiming through him is directed not to interfere in the peaceful possession of the plaintiff upon the suit land bearing Sry. No.33/8 admeasuring 27 Are situated at Silvassa, Dadra and Nagar Haveli.

(iii) Decree be drawn accordingly.”

2 Regular Civil Appeal No.3 of 2010, was preferred by the defendant which was allowed on 19th April, 2012, by the learned Principal District Judge Silvassa. Hence, this Second Appeal by the original plaintiff.

3 The trial Court recorded the finding that the plaintiff was found to be in possession of the entire 27 Are of land in survey no.33/8. It is also the finding recorded that the plaintiff has established his ownership over this property and, therefore, the decree has been passed. Before the trial Court, it was urged that the plaintiff himself has admitted that out of total 27 Are of land owned by him, the land admeasuring 15 Are was in possession of the defendant. The trial Court did not consider to be an admission in unequivocal term. The Lower Appellate Court has reversed this finding and it is held that the defendant was in possession of 15 Are of land on the basis of the admission given by the plaintiff himself.

4 The plaintiff is the owner of survey no.33/8 admeasuring 37 gunthas of land whereas the defendant is the owner of survey no.33/9 admeasuring 9 gunthas of land and there is no dispute about it. The suit filed by the plaintiff was

simpliciter for injunction restraining the defendant from interfering the possession of the plaintiff over the entire land survey no.33/8. The plaintiff is found to be in actual possession of 12 Are of land out of survey no.33/8 and the defendant is in possession of 15 Are of land out of survey no.33/8 belonging to the plaintiff. It is urged that the Lower Appellate Court could not have dismissed the suit for title and possession filed by the plaintiff to the extent of 12 Are of land in survey no.33/8. The substantial question of law is, therefore, framed as under:

“ Whether the Lower Appellate Court was right in dismissing the suit in its entirety?

5 Admit. Heard finally by consent of the learned counsel for the parties.

6 Obviously, the Lower Appellate Court could not have dismissed the suit of the plaintiff in its entirety. The plaintiff was entitled to permanent injunction restraining the defendant not to enter in his possession over 12 Are of land in survey no.33/8 situated at Silvassa, Dadra & Nagar Haveli. The plaintiff had not filed a suit for injunction over 15 Are of land in possession of the defendant. The decree passed by the Lower Appellate Court

therefore needs to be modified, by leaving open for the parties to adopt all such remedies as available in law to recover possession

7 The Appeal is partly allowed.

8 The Judgment and order passed by the Lower Appellate Court on 19th April, 2012 in Regular Civil Appeal No.3 of 2012, is hereby quashed and set aside to the extent it dismissed the suit of the plaintiff in respect of 12 Are of land out of survey no.33/8. The suit filed by the plaintiff is decreed to that extent by granting permanent injunction restraining the defendant from interfering the possession of the plaintiff over 12 Are of land in survey no.33/8. It is open for the plaintiff to file a suit for possession in respect of 15 Are of land in possession of the defendant, as is permissible in law.

9 All the questions and defences in response to this civil suit are left open.

JUDGE