

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

SECOND APPEAL NO. 89 OF 2013

Smt. Lahanbai Laxman Janrao

...APPELLANT
(ori. Deft. No. 1)

versus

Smt. Vatchhalabai Bhagaji Kandalkar
and others

...RESPONDENTS

.....
Mr. G.V. Wani, Advocate for appellant
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 4th JANUARY, 2016.

Order :-

1. Heard learned counsel for appellant - original defendant no. 1.
2. Regular civil suit bearing No. 349 of 1995 has been filed by respondent No. 1 - original plaintiff seeking injunction simplicitor in respect of suit fields referred to in the plaint. The suit was decreed by joint civil judge junior division, Sangmaner under judgment and decree dated 11th December, 2001. Against said judgment and decree, regular civil appeal No. 5 of 2002 was preferred by present appellant - defendant No. 1. The appellate court has confirmed the decree passed in regular civil suit No. 349 of 1995, as such, appellant - defendant No. 1 is before this court in present second appeal.
3. Learned counsel for appellant - defendant No. 1 in regular civil suit no. 349 of 1995 has fairly referred to that in previous litigation i.e.

regular civil suit No. 194 of 1983 wherein present appellant was plaintiff whereas present respondent No. 1, who was defendant No. 1 in that suit, had been found on evidence to be in possession of suit property. It appears that accordingly said suit had been considered. Learned counsel further submits that it will have to be taken into account that against the decree in regular civil suit No. 194 of 1983 appeal has been preferred and the same is pending.

4. Be that as it may, present suit i.e. regular civil suit no. 349 of 1995 indisputably was for simplicitor injunction based on possession. The appellant has not been in a position to show injunction could not have been issued in favour of plaintiff. The courts below have concurrently held plaintiff to be in possession of the property. Said findings could not be said to be not sustainable and it cannot be said to be perverse.

5. Having regard to the same, second appeal does not deserve any consideration and the same stands dismissed.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK