

(1)

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

SECOND APPEAL NO. 233 OF 2017

Vikas s/o Narayandasji Malani,
age 25 years occupation business and agriculture
R/o Shivaji Nagar, Majalgaon Taluka Majalgaon Dist. Beed.

... APPELLANT
(Original plaintiff)

VERSUS

1. Dinesh S/o Rajabhau Jadhav,
age 24 years occupation agriculture
2. Rajabhau S/o Tulshiram Jadhav,
age 50 years occupation agriculture

Both R/o Kharat Adgaon Taluka Majalgaon
District Beed.

...RESPONDENTS
(Original defendants)

Mr Sudarshan J. Salunke, Advocate for appellant.
Mr Chetan T. Jadhav, Advocate, holding for Mr A.D. Pawar,
Advocate for respondents No.1 and 2.

CORAM : N.W. SAMBRE, J.

DATE : 12th July, 2017

ORAL ORDER

Appellant filed Regular Civil Suit No. 118/2013 for declaration that he is owner, and in possession of the suit property, and injunction is sought against defendants from interfering with the possession.

(2)

2. The suit came to be decreed by the judgment and decree dated April 7, 2016 passed by the Civil Judge (Senior Division), Majalgaon, whereby it is declared that appellant is owner and possessor of the suit property and injunction order is passed against the defendants/respondents, restraining them from interfering with the possession and enjoyment of the suit property.

3. The respondents preferred an appeal being Regular Civil Appeal No. 36 of 2016 before the learned District Judge, Majalgaon, which came to be partly allowed, vide Judgment and decree dated August 23, 2016, whereby the Appellate Court set aside the judgment and decree of the perpetual injunction. Feeling aggrieved, this Second Appeal.

4. The learned Counsel for the appellant/original plaintiff while trying to make out case for grant of perpetual injunction and restoration order passed by the learned Civil Judge (Senior Division), Majalgaon, to that effect, would urge that the Appellate Court has failed to appreciate evidence of P.W.4, who has deposed that the respondents are in excess possession of land than the one which is mentioned in the sale deed. He would then urge that the evidence of the witnesses is not properly appreciated by the First Appellate Court, and as such, according to him, judgment and decree is not sustainable.

(3)

5. The learned Counsel for the respondents supported the judgment and would urge that since the appellant/plaintiff has failed to establish cause of action for seeking the relief of injunction, the Appellate Court rightly allowed the appeal to the extent of the relief of perpetual injunction.

6. If appreciated from the record the appellant/plaintiff has come out with a case that the respondents/defendants have on 13th June 2013 started destroying the boundaries of two fields. According to him, the said event was witnessed by P.W.2 Maruti, who was cultivating the land of plaintiff on contract basis.

7. Both the Courts below, particularly, the Appellate Court upon appreciating evidence of said witness, has noted that the testimony of said witness cannot be considered to be reliable as he has admitted that plaintiff/appellant has never stopped the activities of respondents/defendants of destroying the common boundary. This witness was unable to narrate the exact place, date and time of event though he claimed to be the eye witness to the incident in question.

8. So far as evidence of P.W.4 is concerned, even for the sake of argument it is presumed that respondents are in possession of extra

(4)

land than the one permissible as per sale deed, the relief of injunction in such eventuality cannot be granted so as to divest the purchaser of the land through an order of injunction. The evidence of P.W.4, in my opinion, will be of hardly any assistance to the appellant/plaintiff.

9. The Appellate Court while modifying decree of the Trial Court and rejecting prayer for injunction, has appreciated cause of action narrated, and upon analysis of evidence has recorded a finding that appellant has failed to demonstrate case for grant of injunction, which appears to be just and proper. No interference is warranted as appeal lacks substantial question of law. As such, appeal stands dismissed.

10. In view of dismissal of the Second Appeal, Civil Application, if any, stands disposed of.

(N.W. SAMBRE, J.)

pjm