

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.86 of 2016
(Hussain s/o Shripat Fulzele v. Vinay s/o Kishor Pashine and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri A.S. Bhendarkar, Advocate for Appellant.
Shri N.V. Fulzele, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.
Date : 8th March, 2017

The Trial Court dismissed Regular Civil Suit No.8 of 2005 for declaration that the defendant Nos.2 to 4 be restrained from dealing with the suit property in any manner, and for perpetual injunction restraining the defendant from interfering with the peaceful possession of the plaintiff over the suit property. The suit property is the land admeasuring 0.39 HR out of Survey No.83. The lower Appellate Court sets aside the decision of the Trial Court in Regular Civil Appeal No.455 of 2014 on 8-10-2015 and passes a decree restraining the defendant No.1 by way of perpetual injunction from obstructing the lawful possession of the plaintiff over 0.39 HR of land out of Survey No.83, which was originally the part and parcel of old Survey No.24/1, which is shown to be the part and parcel of the suit property. Hence, the original defendant No.1 is before this Court in this second appeal.

The claim of the plaintiff for ownership and grant of injunction is based upon the registered sale-deed dated 6-2-2003 executed by the defendant Nos.2 to 4 in favour of the plaintiff. The defendant Nos.2 to 4 did not participate in the proceedings of the civil suit nor of the appeal. It is the defendant No.1, who contested the suit. According to the defendant No.1, he purchased the suit property by the registered sale-deed dated 20-12-1954 from one Chandrabhagabai and is in continuous possession of it. Further, according to him, the plaintiff was neither the owner of the suit property nor was in possession of it. According to him, the plaintiff claimed the possession of the suit property from the defendant Nos.2 to 4, which indicates that he was not in possession of the suit property and, therefore, the question of passing a decree for permanent injunction restraining the defendant No.1 from interfering with his possession, does not at all arise.

Though the Trial Court dismissed the suit, the lower Appellate Court relies upon the evidence of one Sheshrao Laxmanji Lokhande, the Talathi from the office of Consolidation Officer, examined by the defendant No.1. This witness has stated in his evidence that under the Consolidation Scheme of 1985, the lands covered by Survey Nos.21/4 and 94 were consolidated and a common Survey No.83 was formed, consisting of land

admeasuring 2.51 HR. The defendant No.1 purchased the land admeasuring 0.39 HR out of old Survey No.21/4, which was re-numbered as Survey No.92 in the Consolidation Scheme. He states that the defendant No.1 accepted exchange of land with the defendant Nos.2 to 4, who were the owners of Survey No.94. The defendant No.1 became the owner by way of exchange in respect of Survey Nos.95/4, admeasuring 0.15 HR of land, which had nothing to do with the land comprised of Survey No.83. The lower Appellate Court relies upon the evidence of another witness Kamlakar, who was the Taluka Inspector of Land Records, examined by the defendant No.1, who stated that the consolidation was by consent of both the parties, implemented in the year 1980. The lower Appellate Court finds that the suit land is an open land and the plaintiff having established his title over it on the basis of the sale-deed dated 6-2-2003, shall be presumed with the possession of it on the basis of the principle that "title follows possession". Since it was found that the defendant No.1 obstructed in carrying out the measurement, a decree for permanent injunction to that effect is passed by the lower Appellate Court.

Shri Bhendarkar, the learned counsel appearing for the appellant, has raised several questions, including lack of pleadings, and has also invited my attention to the reliefs claimed in the plaint. However, in view of the adjudication given by the

lower Appellate Court, I do not find that this second appeal is required to be entertained by framing any substantial question of law, as what the lower Appellate Court has done is the substantial justice between the parties.

The second appeal is dismissed.

Judge.

Lanjewar