

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

902 SECOND APPEAL NO. 316 OF 2000

Arjun s/o Gangaram Barinde
(Gavankar), since died through L.Rs.

1. Kashibai w/o. Arjun Barinde
Age: 52 years, Occu.: Household.
2. Asha w/o. Subhash Shankare
Age: 31 years, Occu.: Household.
3. Anuradha w/o. Laxman Kajale
Age: 33 years, Occu.: And
4. Sachin S/o.Arjun Barinde
Age: 29 years, Occu.: Agril.
5. Manisha w/o Nagesh Somwanshi
Age: 26 years, Occu.: Household.
6. Dayanand s/o Arjun Barinde
Age: 24 years, Occu.: Agril.
All R/o.Borwati,
Tq. & Dist.Latur. ..Appellants

VERSUS

Vikram s/o Shamrao Mane
Age: 37 years, Occu.: Service
R/o. Borwati, Tq.Latur,
Dist.Latur. ..Respondent

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Advocate for Appellants : Shri Narsing B. Jadhav
Advocate for Respondent : Shri P.P.More

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CORAM: P.R.BORA, J.

Date : 12th July, 2018

ORAL JUDGMENT:-

1. Heard learned Counsel for the appellants and learned Counsel appearing for the respondent.

2. One Arjun Gangaram Barinde had filed the present Second Appeal. He died during the pendency of the Appeal and his legal heirs have prosecuted the Appeal further. The original appellant is hereinafter referred to as plaintiff and the respondent is hereinafter referred to as the defendant as per their status in the Civil Suit.

3. The plaintiff had filed Regular Civil Suit No.447 of 1993 seeking perpetual injunction against the defendant restraining him from obstructing his possession over the suit property. It was the contention of the plaintiff that the suit plot was purchased by him from one Sambhaji

Ghogare on 04.01.1988. It was also his contention that he has carried out construction on the said plot and one room out of it was let out by him to Ambajogai Co-operative Sugar Factory on rent. It was also the contention of the plaintiff that on the basis of the document of sale-Deed, his name was mutated in the Gram Panchayat record and the said plot was numbered as house No.180/1. It was the allegation of the plaintiff against the defendant that the defendant has illegally and unauthorizedly locked his shop and house and has attempted to illegally evict him from suit property. As against it, it was the contention of the defendant that he has purchased the suit property by registered Sale-Deed executed in his favour by Sambhaji Ghogare on 28.09.1989 for the consideration of Rs.2,000/-. It was his further contention that he has constructed six rooms on the said plot and had allotted two rooms out of the same to the plaintiff for a temporary period as he was not having any accommodation at the

relevant time.

4. It is not in dispute that the plaintiff is the son of real sister of the defendant. As held by the Trial Court, plaintiff failed to prove his ownership over the suit plot and his possession was held by the Trial Court to be permissive possession. It was also held by the Trial Court that the plaintiff failed in proving that his possession was in any way illegally obstructed by the defendant, resultantly the suit was dismissed by the Trial Court. Plaintiff thereupon preferred Regular Civil Appeal No.112 of 1997. The learned First Appellate Court concurred with the finding recorded by the Trial Court that the plaintiff failed in proving his lawful title over the suit property and also could not prove that the defendant caused obstruction to his possession. Learned First Appellate Court thus confirmed the findings recoded by the Trial Court and dismissed the First Appeal.

5. Aggrieved by the Judgments rendered by the Courts below, the plaintiff preferred the present Second Appeal. While admitting the present Second Appeal, the following question was framed as the substantial question of law:-

“Whether the plaintiff, whose possession has been accepted by both the Courts below can seek relief of injunction though he is not the owner of the suit property.”

6. Shri N.B.Jadhav learned Counsel appearing for the appellants assailed the Judgments passed by the Courts below on various grounds. The learned Counsel submitted that the Courts below have failed in properly appreciating the oral as well as the documentary evidence brought on record by the plaintiff. The learned Counsel submitted that though sufficient evidence has been brought on record by the plaintiff to prove his title to the suit house, the Courts below have failed in

properly appreciating the said evidence. The learned Counsel submitted that the Gram Panchayat record and the correspondence between plaintiff and Ambajogai Co-operative Sugar Factory was sufficient to prove that the suit property is owned by the plaintiff. The learned Counsel further submitted that sufficient evidence was also brought on record showing that the plaintiff was running a Flour Mill on the suit plot. It was also contended by the learned Counsel that the Courts below have wrongly held the defendant to be the true owner of the suit property without any cogent evidence therefor. In support of his argument, the learned Counsel relied upon the following Judgments:-

I) Maria Colaco & Anr. Vs. Alba Flora Herminda D'Souza & Ors., reported in AIR 2008 Supreme Court, 1965.

II) M.Kallappa Setty Vs. M.V.Lakshminarayana Rao, reported in AIR 1972, Supreme Court, 2299.

III) Rame Gowda (Dead) By LRS. Vs. M.Varadappa Naidu (Dead) By LRS. and Another, reported in (2004) 1 Supreme Court Cases, 769.

IV) Smt.Sarladevi widow of Kundanlal Bandawar, Dharampeth, Nagpur Vs. Shailesh s/o Gourishankar Namdeo, Tilaknagar, Nagpur, reported in AIR, 1996 Bombay, 98.

V) Francisco Xavier Ferrao Vs. Prof. Filomeno Bonifacio de Viera Menezes and Ors., reported in 2013 (3) ABR, 412.

7. The learned Counsel eventually prayed for allowing the Second Appeal by setting aside the orders passed by the Courts below and consequently to decree the Regular Civil Suit No.447 of 1993 filed by the plaintiff.

8. Shri P.P.More learned Counsel appearing for the respondent supported the Judgments passed by the Courts below. The learned Counsel submitted that though as many as five witnesses were

examined by the plaintiff, the evidence of none of them was of any use to prove the title of the plaintiff over the suit property. The learned Counsel further submitted that on the contrary, the defendant undoubtedly proved that the suit property was purchased by him by way of registered Sale-Deed dated 28.09.1989 executed by Sambhaji Ghogare in his favour. The learned counsel submitted that the Courts below have rightly held that the alleged possession of the plaintiff over some portion of suit property was permissive possession. The learned Counsel further submitted that the plaintiff has failed in bringing on record any evidence to show that any illegal attempt was made by the defendant to cause disturbance in the alleged possession of the plaintiff over the suit property. The learned Counsel submitted that both the Courts below have rightly refused the relief of perpetual injunction against the defendant, who is the true owner of the suit property. The defendant also succeeded

in proving that some portion of the suit house was given by him to the plaintiff for temporary residence. The mother of the plaintiff, who happens to be the real sister of the defendant had made a request therefor. The learned Counsel placed reliance on the Judgment of Hon'ble Apex Court in case of **Premji Ratansey Shah and others Vs. Union of India and others**, reported in **1995 (2) Bom.C.R., 374** to buttress his argument.

9. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the Judgments passed by the Courts below as well as existing material on record. It is revealed that the plaintiff did not produce on record any document to prove his title over the suit property. Though, it was his contention that he had purchased the suit property on 04.01.1988 from one Sambhaji Ghogare, he did not produce on record registered Sale-Deed to establish the said fact.

It is also revealed that the plaintiff had filed the copy of the agreement of Sale allegedly executed between him and Sambhaji Ghogare on the Stamp paper of Rs.10/- with the Gram Panchayat and on that basis had got mutated his name in the Gram Panchayat record.

10. As has been observed by the Trial Court none of the witnesses examined by the plaintiff proved to be of any use to substantiate the claim of the plaintiff as raised in the suit plaint. As against it, the defendant had placed on record concrete evidence showing that he had purchased the suit property by way of registered Sale-Deed executed in his favour on 28.09.1989 by Sambhaji Ghogare. The said Sale-Deed is at Exh.71 on the record of the Trial Court. The defendant had also placed on record the tax receipts. Analysing the evidence brought on record before it, the learned Trial Court recorded the finding that the plaintiff failed in proving his ownership over the

suit plot and that he was in permissive possession of the suit property. The First Appellate Court has re-appreciated the entire evidence on record before arriving at the conclusion that the plaintiff did not bring on record any evidence proving his ownership over the suit property.

11. It is transpired from the oral and documentary evidence on record that the plaintiff and the defendant both have claimed the ownership over one and the same property, though in the Gram Panchayat record there are two separate entries in respect of the said properties. It was the contention of the plaintiff that he had purchased the suit property from one Sambhaji Ghogare. The defendant also claims to have purchased the said property from Sambhaji Ghogare. The plaintiff, however, could not place on record any document to prove that the said property was purchased by him. It was his contention that there was an agreement of sale executed by the said Sambhaji Ghogare in

his favour and the said document of agreement of sale was produced by him with the Gram Panchayat for mutating his name in the record of Gram Panchayat. Though, the Gram Sevak was examined by the plaintiff, he did not produce on record the agreement of sale, which according to the plaintiff was submitted with the Gram Panchayat at the time of mutating his name in the Gram Panchayat record. In the cross-examination, it was admitted by the plaintiff that he was having an agreement of sale on stamp paper of Rs.10/- with him, which was executed in his favour by Sambhaji Ghogare and the said document was presented to the Gram Panchayat for mutating his name to the suit property.

12. As has been rightly observed by the First Appellate Court, the plaintiff in such circumstances must have taken the witness summons against the Gram Panchayat calling upon the Gram Sevak to file on record the document of agreement

of sale allegedly presented by him with the Gram Panchayat. Admittedly, no such effort was done by the plaintiff. The plaintiff also did not produce any secondary evidence in that regard. Thus the fact remains that except oral evidence of plaintiff that one Sambhaji Ghogare has executed an agreement of sale in his favour in respect of suit property on Stamp paper of Rs.10/-, there was no other evidence to support his contention.

13. Further, as has been rightly observed by both the Courts below the document allegedly in possession of the appellant even though would have been produced by him was having little evidentiary value since it was an unregistered document and could not have been read and relied upon as the evidence. As against it, the defendant has raised a specific plea that the suit property was purchased by him from Sambhaji Ghogare by a registered Sale Deed executed on 28.09.2018. The defendant has placed on record the said registered

Sale Deed and it was duly proved by him during the course of his evidence before the Trial Court. The said Sale Deed is on record of the Trial Court at Exh.71. The defendant had also produced on record of the Trial Court the tax receipts at Exh.73 and Exh.74 by which he has paid the property tax to the Gram Panchayat. It was the further case of the defendant that on the said property, he had constructed six rooms out of which some portion was permitted to be used by the plaintiff since he was in his relation and was not having any accommodation at the relevant time.

14. From the evidence as aforesaid, there has remained no doubt that the plaintiff has miserably failed in proving his title to the property whereas the defendant has undoubtedly proved his title to the suit property. It was throughout the case of the defendant that the alleged possession of the plaintiff over some part of the suit property was permissive possession. Considering

the evidence as aforesaid, it does not appear to me that the Courts below have committed any error in rejecting the claim of the plaintiff.

15. The Judgments relied upon by the learned Counsel for the appellant – plaintiff does not appear to be of any help to the case as has been attempted to be made out by the plaintiff. In the case of **M.Kallappa Setty** (supra), the Hon'ble Supreme Court has held that the plaintiff in possession of the suit property can on strength of his possession, resist interference from the defendant, who has no better title than himself and get injunction restraining the defendant from disturbing his possession. In the instant case, the plaintiff has utterly failed in proving that he has title over the suit property much less better than the defendant. Thus, the aforesaid Judgment cannot be of any help to the plaintiff.

16. The Judgment in the case of **Smt.Sarladevi**

widow of Kundanlal Bandawar (supra) also cannot be of any use for the plaintiff since the facts in the said case are altogether different. Present is not the case of illegal eviction. It was the plaintiff who, on the basis of title claimed some relief and since he failed in proving his title could not get any relief from the Courts below.

17. The law laid down in the case of **Francisco Xavier Ferrao** (supra) also cannot be applied to the facts of the present case. In the said matter the Hon'ble Apex Court did not interfere in the order of injunction restraining the defendants from interfering with the possession of the plaintiff for the reason that the defendants therein were not sure of their possession as well as their title over the suit property by way of adverse possession. In the present matter, the defendant has successfully proved his title to the suit property. As such the law laid down in this Judgment cannot be used in favour of the appellants.

18. The Judgment in the case of **Rame Gowda (Dead) by Lrs.** (supra) also does not support the case of the appellants. The Hon'ble Apex Court in the said Judgment has held that, "in the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. When the defendant fails in proving his title to the suit property, the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant." The facts in the present case are distinguishable. In the present case, the plaintiff has failed in proving his title whereas the defendant has undoubtedly proved his title to the suit property. The Courts below have further held that the plaintiff has also failed in proving that his permissive possession over the suit property was in any way illegally obstructed by the defendant.

19. After having considered the entire material on

record, I do not see any reason to cause any interference in the Judgments passed by the Courts below impugned in the present Appeal. I reiterate that since the plaintiff failed in proving his title to the suit property and also failed in bringing on record any evidence showing that his permissive possession was in any way illegally obstructed by the defendant, was not entitled for any relief as was sought by him in the suit filed by him. I thus answer the substantial question of law accordingly. No case has been made out by the appellants for causing interference in the Judgments passed by the Courts below. In the result, the following order is passed:-

ORDER

The Second Appeal is dismissed with costs.

(P . R . BORA)
JUDGE

SPT