

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

SECOND APPEAL NO. 55 OF 2016

Abbas B. Jakate

..Appellant

v/s.

Shabbir Babalal Pathan

..Respondent

Mr. Abdul Karim N. Mulla for the Appellant
None for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28TH NOVEMBER, 2018.**

P.C.

1. The appellant herein who was the defendant in the suit has challenged the judgment and decree dated 21st April, 2015 whereby the learned District Judge-2, Islampur has dismissed the Reg. Civil Appeal No. 18 of 2014 and thereby confirmed the judgment and decree dated 30th November, 2013 passed by the 5th Joint Civil Judge, Junior Division, Islampur dismissing the Regular Civil Suit No. 443 of 2007.

2. The respondent herein, who was the plaintiff in the suit claims to be the owner of the property bearing No.1090 situated at Village

Chikurde, Taluka Walwa. The case of the respondent herein is that he had purchased the said property by Deed of Sale dated 29th December, 2004. He claims to have developed the suit property and since the date of purchase is in possession of the said property. The respondent/plaintiff had filed a suit for perpetual injunction alleging that the appellant-defendant had started interfering with his possession.

3. The appellant had contested the suit mainly on the ground that the sale deed was executed without complying with the legal formalities and as such the sale deed did not confer any title on the respondent-plaintiff.

4. Based on the aforesaid pleadings issues were framed and evidence was adduced by both the parties. Upon appreciating the evidence on record, the learned trial Judge as well as the Appellate Court held that the plaintiff had purchased the property by sale deed dated 29th December, 2004 and that he is in possession of the property. The learned Judge further held that the plaintiff had proved that the defendant was disturbing his possession and hence granted relief of permanent injunction.

5. Mr.Mulla, the learned Counsel for the appellant submits that the suit for injunction simplicitor was not maintainable. He has submitted that the title of the plaintiff was in dispute and it was necessary for the plaintiff to seek a declaratory relief. He further submits that in a suit for injunction the learned trial Court was not justified in framing the issue regarding title of the property. The learned Counsel for the appellant has relied upon the following decisions:

(i) *Ramchandra Dagdu Sonavane & Ors. vs. Vithu Hira Mahar* (2009) 10 SCC273.

(ii) *G.K.Naik vs. Susheela Naik* 2000 1 ALD 672

(iii) *Roop Chand vs. Indradevi & Ors.* AIR 1997 MP 200.

6. I have perused the records and considered the submissions advanced by the learned Counsel for the appellant.

7. At the outset it may be mentioned that in *Rame Gauda (D) by Lrs vs. Varadappa Naidu (D) by Lrs.,* (2004) 1 SCC 768, the Apex Court has reiterated that the person in peaceful and settled possession is entitled to retain his possession by injuncting even a

rightful owner. The Apex Court also approved the view taken in *Fakirbhai Bhagwandas & Anr. vs. Mangaldas Haribhai & Anr. (AIR 1951 Bom 380)* wherein the Division Bench of this Court had held that it is not necessary for the person claiming injunction to prove his title to the land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof.

8. In the instant case, it is not in dispute that the respondent-plaintiff had purchased the property by Deed of Sale dated 29th December, 2004. Undisputedly, there is no challenge to the said sale deed. It is also pertinent to note that subsequent to the execution of the said sale deed the suit property was mutated in the name of the respondent-plaintiff. The appellant had challenged the mutation entry before the Sub Divisional Officer, and the Sub Divisional Officer had set aside the said mutation entry. The records reveal that the plaintiff had preferred an appeal before the Additional Collector and the Additional Collector had reversed the decision of the Sub Divisional Officer by holding that there was no fragmentation to the

sale deed as the plaintiff had another land adjacent to the suit property. The appellant herein had challenged the said order in revision filed before the Revenue Commissioner. Same has also been dismissed.

9. The records thus indicate that the respondent-plaintiff was in possession of the property which was purchased by sale Deed dated 29th December, 2004. The findings recorded by the Courts below that the respondent-plaintiff is in possession of the suit property are based on evidence on record. These findings of fact are neither perverse nor illegal. The appeal does not involve any substantial question of law. The appeal has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)