

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

**SECOND APPEAL NO.675 OF 2015
WITH
CIVIL APPLICATION NO.1429 OF 2015
IN
SECOND APPEAL No.675 OF 2015**

Jayshree Balvirsingh Punjabi (D/H) ... Appellants

V/s.

Shri Sanjay Eknath Gavali & Ors. ... Respondents

**WITH
SECOND APPEAL NO.438 OF 2015
WITH
CIVIL APPLICATION NO.957 OF 2015
IN
SECOND APPEAL No.438 OF 2015**

Shri Balvirsingh Motiram Punjabi ...Appellant

vs.

Shri Girdharilal @ Girish Karbhai Gavali & Ors. ...Respondents

Mr.Vivek Salunkhe for the Appellant.

Ms.Chitra S. Rane a/w Mr. Girish Agrawal for the Respondent Nos.6 to 10 in SA No.675/2015.

**CORAM : A.M.DHAVAL, J.
DATE : 15th OCTOBER, 2018.**

P.C.:

Heard Mr. Salunkhe, learned advocate for the appellants and

Mr. Agrawal, learned Advocate for the Respondents.

2. As per the admitted facts the respondents were owners of agricultural land of 2 H 06 R situated at Gat No.239, Mauje Deola. It was their joint family property. Kalwan Nashik road passed through the said land and land of 21 R was acquired for the road. This acquisition bifurcated the land into two parts. One on the Northern side ad-measuring 1 H 46 R was purportedly sold to the appellant Balvirsingh by Sale Deed dated 30/6/97 for Rs.60,000/- The Respondent-Gavali Family had disputed the said transaction contending that it was obtained under the garb of agreement of lease for 5 years but the said defence has been given up later. The dispute is about remaining land of 39 R situated on southern side of Kalwan Nashik road.

3. The wife of Balvirsingh filed a suit for specific performance of agreement dated 30/6/1997 wherein she claimed that Respondent Gavali executed in her favour agreement to sell land on the southern side ad-measuring 39 R for Rs.24,000/-. She paid Rs.15,000/- and balance was to be paid at the time of Sale Deed.

4. The Respondent filed Regular Civil Suit No.73/1998 claiming that the land of 39 R from the southern side was belonging to them and

was in their possession and the appellants herein was trying to disturb their possession. Hence, they claimed perpetual injunction. In Regular Civil Suit No.73/1998 defence was raised by the appellant that land of 1H 46 R was less than the area sold to him. He was having some land on the southern side and therefore injunction should not be granted.

5. In the suit for specific performance Regular civil suit no.41 of 1999 the Gavali Family denied the execution of agreement to sell and all facts incidental thereto. At the time of trial, the wife of Balvirsingh was not alive. She died before her evidence could be recorded. The appellant Balvirsingh in Regular Civil Suit No.41/1999 examined himself, the husband of Jayashree. The Respondent herein examined Girish Gavali.

6. Both the suits were tried jointly and by common judgment the Regular Civil Suit No.41/1999 of the appellant was dismissed with no order as to costs. Regular Civil Suit No.73/1998 of Gavali Family was decreed and Balvirsingh was restrained from disturbing the possession of Gavali Family over land of 39 R.

7. The learned Trial Judge has observed that evidence of Balvirsingh was insufficient to prove the agreement to sell as he has not

signed the agreement and scribe or attesting witnesses were not examined. It may be stated that Balvirsingh has filed affidavit of attesting witnesses but he was not produced for the cross examination.

8. In the two appeals filed against two judgments and decrees, there was common hearing and both the appeals came to be dismissed with costs by judgment dated 4/10/2014. Learned Principal District Judge held that though Balvirsingh has not signed the agreement still he could prove the same as he was present. View of the learned Trial Judge to that much extent was not upheld. On merits he found that Balvirsingh has not examined attesting witness or scribe. The agreement is not registered nor notarized. The agreement bears thumb impressions. Execution of agreement has been denied. Balvirsingh has issued notice (Exhibit 94) wherein there is no reference to this agreement. Therefore agreement to sell has not been proved.

9. As far as the suit for perpetual injunction filed by Gavali Family is concerned it was observed that the evidence on record disclose that the land from the northern side was sold to Balvirsingh whereas the land on the southern side i.e. 39 R remained with Gavali Family. Balvirsingh was

claiming right of specific performance in respect of land situated on the southern side. There was no measurement conducted. Hence, there was no substance that Balvirsingh was not in possession of land ad-measuring 1H 46 R as sold to him. Hence, the decree of injunction was also confirmed.

10. After hearing the learned advocates and going through the documents, I find that question Whether Gavali Family has executed the agreement to sell in favour of Jayashree on 30/6/1997 is purely a question of fact. There are concurrent findings of both the lower Court that the said agreement has not been proved. The said agreement is not registered. It bears thumb impression of the members of Gavali Family. The attesting witness and the scribe are not examined. Balvirsingh, the husband of Jayashree relied on his own evidence. There was no reference of the said agreement in the notice (Exhibit 94). Considering the material on record, both the lower Courts held that the agreement was not proved. There is no perversity in the view taken by the lower Courts. The lower Courts have not ignored any material evidence. They have even not considered inadmissible evidence for arriving at the findings. On the contrary, it is reasonable and probative view. Hence, no interference is permissible in exercise of jurisdiction under section 100 of Civil Procedure Code as far as dismissal of

suit for specific performance.

11. As far as claim for perpetual injunction is concerned, the documents on record clearly disclose that the land of Gavali Family was bifurcated by road into two parts. Northern part was sold to Balvirsingh and the southern part ad-measuring 39 R remained with Gavali Family. Jayashree, the wife of Balvirsingh has filed the suit for specific performance of the southern land of the Gavali Family which indicates that Gavali Family was the owner and in possession of 39 R from the southern side. Balvirsingh has taken a contrary stand in the two suits. On one hand he is claiming specific performance of land ad-measuring 39 R from southern side alleged agreed to be sold to his wife thereby admitting the Respondent's ownership and possession over the same. On the other hand he is claiming that he has purchased part of the suit land from southern side and he is not in possession of 1 H 46 R. The Sale Deed shows that Balbir purchased land from Northern side. There is no measurement carried out to support the stand of Balvirsingh. There are concurrent findings of both the Courts that the land on southern side ad-measuring 39 R belonged to Gavali Family and was in their possession. Balvirsingh has no right to disturb their possession. I find no perversity, no consideration of

inadmissible evidence and no ignorance of admissible evidence.

12. In the light of these facts, there is no scope for interference in the concurrent findings by both the lower Court while allowing the suit of Gavali Family for perpetual injunction and dismissing the suit for specific performance.

13. Hence, both the Second Appeals deserve to be dismissed in limine and those are accordingly dismissed.

(A.M.DHAVAL, J.)