

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**Second Appeal No.290 of 2016**

**(Ramkrushna Atmaram Bankar .vs. Suman Mahadeo Gharde and ors. )**

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

Court's or Judge's orders.

---

Mr. V.D. Muley, Advocate for Appellant.

Mr. Yash Maheshwari, Advocate for Respondent No.1.

**CORAM : Manish Pitale, J.**

**DATED : April 09, 2018.**

By this appeal, the appellant has challenged judgment and order dated 19.09.2014 whereby the Court of Principal District Judge, Bhandara (appellate Court) has allowed the appeal filed by the respondent No.1 and decreed the suit for declaration and permanent injunction filed by her in respect of ownership of plot no.102 at village Antargaon, tahsil Lakhandur, district Bhandara.

2. The facts leading up to filing the instant appeal are that the respondent no.1 claimed to have purchased the suit plot on 10.04.1995 from one Dodku Sukhdev, who had been allotted the said plot under the scheme for Rehabilitation of Flood Affected Persons in the year 1984. It was the case of the respondent no.1 that the appellant had sought to disturb her possession in the suit plot, due to which she was constrained to file Regular Civil Suit No.201 of 1996 being a suit for possession and damages against the appellant. The said suit was decreed in her favour on 26.04.2000

against which the appellant had filed an appeal. The said appeal was dismissed and the decree was put in execution by the respondent No.1.

3. On 05.07.2006, the Sub Divisional Officer, Sakoli, passed an order forfeiting the aforesaid suit plot on the ground that the vendor of the respondent No.1 i.e. Dodku Sukhdev had not made construction on the suit plot within the stipulated time period and that, therefore, the allotment of the suit plot to him stood lapsed. On this basis, the very title of the respondent no.1 came in jeopardy, due to which she was constrained to file Regular Civil Suit No.123 of 2006, being a suit for declaration and permanent injunction before the Court of Civil Judge, Senior Division, Bhandara. In this suit, the respondent no.1 made the appellant a party because execution proceedings in respect of the earlier decree obtained by her in Regular Civil Suit No. 201 of 1996 were pending before the executing Court.

4. By judgment and order dated 25.06.2010, the aforesaid trial Court at Bhandara, dismissed the suit filed by respondent no.1, holding that she could not be said to be owner of the suit plot and house constructed thereon because she had failed to prove that the order dated 05.07.2006 passed by the SDO was illegal. Aggrieved by the same, the respondent no.1 filed Regular Civil Appeal No. 98 of 2010 before the appellate Court. By the impugned judgment and order, the appeal filed by the respondent no.1 has been allowed and it has

been held that she is entitled to the decree of declaration and permanent injunction claimed by her. The appellate Court has held that once an allotment was made under the scheme for rehabilitation of flood affected families to the vendor of respondent no.1, in ordinary course such an allotment was in perpetuity and that even if it was assumed that permission of the Collector was required for sale of such plot in favour of respondent no.1, failure to obtain such permission was an irregularity which would not vitiate the sale transaction. On this basis, the appeal was allowed and the suit was decreed.

5. It is against the said impugned judgment and order that the present appeal has been filed by the appellant who was defendant no.1 before the trial Court. The appellant has no claim over the suit plot. In fact, he has suffered a decree against him in Regular Civil Suit No.201 of 1996, being a suit for possession filed by the respondent no.1 against the appellant. He has no claim of title or possession in the suit plot. It is also not his case that the respondent no.1, in any manner, has been seeking to disturb the appellant in his occupation of the adjoining land. The appellant was made a party to the suit for declaration and permanent injunction by the respondent no.1 as executing proceedings in respect of the earlier decree passed in Regular Civil Suit No. 201 of 1996 were pending. Thus at best, the appellant was a proper party to the subsequent suit and not even a necessary party. The principal grievance in the subsequent suit being Regular Civil Suit No. 123 of 2006

filed by the respondent no.1 was against the order dated 05.07.2006 passed by the SDO. Findings have been rendered by the appellate Court in the impugned judgment and order granting decree in favour of the respondent no.1 and against the respondent Nos. 2 to 6. The appellant cannot be said to be aggrieved by the aforesaid findings in the judgment and decree passed by the appellate Court, because it would be for the respondent Nos. 2 to 6 to raise a grievance, if any, as it has been held that the respondent no.1 holds valid title and possession in the suit plot.

6. Since the appellant cannot have any grievance in respect of the impugned judgment and order, this appeal filed at his behest seeking to raise challenge on merits against the impugned judgment and order cannot be entertained. Therefore, it is held that there is no substantial question of law that arises in this appeal for this Court to exercise jurisdiction under Section 100 of the Code of Civil Procedure, at the behest of the appellant herein. Accordingly, this appeal is dismissed with no order as to costs.

7. Needless to say, it is made clear that this order will not come in the way of respondent Nos. 2 to 6 to raise a challenge against the impugned judgment and order, if they so wish to challenge.

**JUDGE**