

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 191 of 2017
[Ashok Kishan Waghmare & another Vs. Ashok Rameshchandra Pashine others]

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

Court's or Judge's orders

Mr. R. D. Karode, Adv., for the appellants.
Mr. V. S. Mishra, Adv., for respondent nos. 1 to 5.

CORAM : A. S. CHANDURKAR, J.

DATE : 24th January, 2018

Notice was issued on the following substantial question question of law:-

“The ownership of the plaintiffs having been held to be not proved whether they were entitled for relief of perpetual injunction?”

The learned counsel for the parties have been heard on the said substantial question.

It is the case of the respondents - original plaintiffs that Gat No. 57 admeasuring 0.60 Are was granted on lease to their predecessor - Rameshchandra. Said Rameshchandra continued in possession till the year 2003. After his death, in the year 2007 it was found that the appellants herein - defendants were in

possession. A report was accordingly lodged on 22nd June, 2007. On the next day, the appellants admitted their mistake and executed a Compromise-Deed and handed over possession to the plaintiffs. However, as the obstruction continued, the suit for declaration of title along with perpetual injunction came to be filed. According to the defendants, they were in lawful possession of the suit property and the plaintiffs had no title to evict them.

The trial Court after considering the evidence on record partly decreed the suit and granted relief of perpetual injunction. The relief of declaration of title was not granted. The appeal filed by the defendants came to be dismissed.

Shri R. Karode, learned counsel for the appellants, submitted that the trial Court having held that the title of the plaintiffs had not been proved, the trial Court was not justified in decreeing the suit. He referred to the findings recorded against Issue No.1 by the trial Court. It was then submitted that if the title itself was not proved, question of grant of injunction to the plaintiffs would not arise. The document of title of the plaintiffs was never placed on record. Therefore, even the relief of injunction was not sustainable. He placed reliance on the decision in **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by L.Rs. & others** [AIR 2008 SC 2033].

Shri V. S. Mishra, learned counsel for the respondents, supported the impugned order. It was submitted that the defendants by executing documents at Exhs. 65 and 66 clearly admitted the lawful possession of the plaintiffs and hence they were precluded from obstructing the plaintiffs. The 7/12 extracts also indicated the settled possession of the plaintiffs. These findings were recorded by both the Courts.

Having heard the learned counsel and having perused the impugned judgments, I do not find that both the Courts committed an error in partly decreeing the suit and granting relief of perpetual injunction. The suit property was Gat No. 57. The evidence on record indicates that the defendants were the owners of Gat No. 59 as per sale-deed at Exh.95. The 7/12 extracts indicate possession of the plaintiffs prior to filing of the suit. The documents at Exhs. 65 and 66 clearly indicate that the defendants had admitted that they had earlier taken possession of the suit property and on 22nd June, 2007, the same was handed over to the plaintiffs. Though it is submitted that the documents were obtained under coercion, no steps have been taken by the defendants to challenge those documents.

Considering the concurrent findings of fact indicating possession of the plaintiffs, the decree passed

by the trial Court cannot be faulted. The decision in *Anathula Sudhakar* [supra] does not assist the case of the appellants in the facts of the case and in light of the evidence on record. The substantial question of law is answered by holding that the plaintiffs were entitled for the relief of perpetual injunction.

The Second Appeal is, therefore, dismissed. No costs.

Judge

[hedau]