

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.943 of 2018

1. Laxman Mallikarjun Gandhale,
Age 44 years, Occupation Agri.,
2. Balaji Mallikarjun Gandhale,
Age 39 years, Occupation Agri.,
3. Goroba Rama Gandhale,
Age 27 years, Occupation Agri.,
4. Goutam Dnyandev Gandhale,
Age 42 years, Occupation Agri.,
5. Bhima Dagdu Gandhale,
Age 41 years, Occupation Agri.,
6. Arjun Dagdu Gandhale,
Age 41 years, Occupation Agri.,
7. Jagannath Kashinath Gnadhale,
Age 46 years, Occupation Agri.,
8. Navnath Kashinath Gandhale,
Age 44 years, Occupation Agri.,
9. Babu Damu Garad,
Age 44 years, Occupation Agri.,
10. Kuman Damu Garad,
Age 40 years, Occupation Agri.,

All R/o Pimpri Tq. Dist.Osmanabad.

...Appellants.

VERSUS

Abhimanyu Ganpati Gandhale,
Age 69 years, Occupation Agri.,
R/o Pimpri Tq. Dist.Osmanabad.

...Respondents

....
Mr. A. R. Barate, Advocate for appellants.
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CORAM : SMT.VIBHA KANKANWADI, J.
Date : 29-04-2019.

ORDER :

1. Present appeal has been filed by original defendants. Present respondent is the original plaintiff, who had filed Regular Civil Suit No.509 of 2014 for injunction before learned 2nd Joint Civil Judge, Senior Division, Osmanabad. The said suit was decreed on 15-02-2018. Present appellants had challenged the said Judgment and decree before District Court, Osmanabad by filing Regular Civil Appeal No. 42 of 2018. The said appeal was heard by learned District Judge-1, Osmanabad. It came to be dismissed on 31-08-2018, hence, this Second Appeal.

2. Heard learned Advocate Mr. A. R. Barate for appellants/ original defendants. Taking into consideration his submissions and perusal of impugned judgment and decree, it is not even necessary to issue notice to the respondent.

3. It has been submitted on behalf of appellants that both the Courts below have not considered the evidence and law points involved in the case properly. Defendants had denied the title of the plaintiff and therefore, his title was under cloud. Under such

circumstance, injunction could not have been granted unless declaration of ownership would have been sought. Both the Courts below have arrived at a perverse finding that plaintiff possesses the suit property lawfully. The Courts below have relied on the revenue entries, though in fact they are made for fiscal purposes only. Both the Courts have conveniently ignored Khasara Patrak Ex.67, which showed the name of defendants' predecessor's name. Defendants possess the suit property since the time of their forefathers. They have given genealogy to show how the property has come to them. Defendants were not party to Regular Civil Suit No. 83 of 1975. Therefore, that decree was not binding on defendants. Therefore, when the title of the plaintiff was under cloud, without seeking declaration of ownership, his suit for simpliciter injunction was not maintainable.

4. Learned Advocate for appellants has placed reliance on the decision in *Anathula Sudhakar v/s. P. Buchi Reddy (Dead) by L.Rs. & Ors* [AIR 2008 SC 2033]; wherein it has been held that,

“Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to

sue for an injunction simpliciter”.

Further submission has been made on behalf of appellants that, since both the Courts below have not taken into consideration the said legal position, substantial question of law are arising.

5. Learned Advocate for appellant has made available the paper-book of the First Appellate Court and therefore, pleadings as well as evidence was perused. Plaintiff in this case had come with a specific case that he is the suit land bearing block No. 506 admeasuring 24 R situated at village Pimpri, Tal & Dist. Osmanabad is his ancestral property. Defendants have no concern over the same. He possess the suit land since his forefathers. Defendants have obstructed his possession on 06-07-2004 and then he prayed for perpetual injunction against defendants.

6. Defendants had come with a case that one Tatyaba Narayan Gandhale was original owner of Survey No. 156/1, which is now converted to Block No. 506. Narayan left four sons viz. Tatyaba, Dagadu, Ganapati and Rangnath. It is stated that suit land has been shown wrongly in the name of plaintiff during the implementation of consolidation scheme. However, plaintiff never possessed the land. They are the owners and possessors.

7. Thus, it can be seen from the simple pleadings of the parties that plaintiff had come with specific case of ownership and

possession. Merely raising contention in the written statement does not amount to raising of clouds over the ownership right of a party. There should be supporting documents also. Plaintiff had produced 7 x 12 extracts since 1961-62. There were long standing entries in his name in the ownership as well as possession column. As against this defendants had filed only one document i.e. Khasara patrak Ex.67 showing that in the year 1955-56 to 1960-61 Tatyaba Gandhale was shown as owner and possessor. However, there is no explanation by defendants as to why that entry was not carried forward, when the consolidation scheme was implemented and why they did not challenge the alleged wrong entries in the consolidation? When defendants have failed to answer these questions, it can not be said that there was any substance in the defence raised by them.

8. No doubt, the revenue entries are made mainly for fiscal purposes, but when they are long standing and they were accepted without any challenge by anybody, then it is a relevant piece of evidence. No doubt, the defendants were not party to Regular Civil Suit No. 83 of 1975, but it can be seen that the defendants in that suit were also contending that Tatyaba was owner of the property. That contention was not accepted by competent Court. Plaintiff was held to be the owner and possessor of suit property in that suit also. That is a relevant piece of evidence to support the claim of the plaintiff.

9. There can be no second opinion in respect of the ratio laid down in Anathula Sudhakar's case (supra); however, it is to be noted that in the said verdict, Hon'ble Supreme Court has clearly laid that Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. Here, for the plaintiff, his title was already established under Regular Civil Suit No 83 of 1975. He was seeking protection of his possession only. Defendants without any cogent and material documents could not have raised clouds over the title of the plaintiff over the suit land. Hon'ble Supreme Court has not held that the Suit for bare injunction is not maintainable and it should be dismissed in entirety. Rather it has been held that in cases wherein complicated issues of title have arisen, the Plaintiff should be directed to file a more comprehensive Suit for declaration and other reliefs. Here in this case, when the title of the plaintiff was already established in earlier suit, (may not be against defendants), then it was not at all necessary for him to get it established again in this suit, merely because defendants had questioned it in their written statement. There is no substance in the arguments by appellants that the suit for simpliciter injunction filed

by respondent was not maintainable.

10. No fault can be found in the judgment and decree passed by the Courts below. No substantial question of law is arising in this case as contemplated under Section 100 of Code of Civil Procedure. Hence, the appeal stands disposed of as **“Not Admitted”**.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.