

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.83 OF 2013
WITH CA/5857/2013 IN SA/83/2013

RAMA S/O NAROBA PATWE AND ORS
VERSUS
SHANKAR S/O BALLAPPA BHARARE

...

WITH
SECOND APPEAL NO.86 OF 2013
WITH CA/5856 OF 2013 IN SA/86/2013

RAMA S/O NAROBA PATWE AND ORS
VERSUS
PRAKASH S/O NIVRUTTI KURUDE

...

Mr. S. R. Patil h/f Mr. P. R. Katneshwarkar, Advocate for appellants in
both the second appeals.

Mr. Vijay Sharma, Advocate for the respondent in both the second
appeals. (Absent)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28.09.2021

ORDER :-

. Both these appeals have been filed by the same appellants, however, the plaintiffs i.e. respondents are different. The point involved is almost same and, therefore, taken up for admission together.

2. Present respondents are the original plaintiffs, who had filed Regular Civil Suit Nos.123 of 2005 and 125 of 2005 before learned Civil

Judge Senior Division, Basmathnagar, Dist. Hingoli for permanent injunction. They were in respect of two different plots admeasuring 1 Guntha from Survey No.133/A situated at Basmathnagar of which boundaries were given in the plaint. Both the suits came to be decreed on 18.08.2010. Present appellants were the original defendants in both the suits. They had preferred Regular Civil Appeal Nos.36 of 2010 and 35 of 2010 respectively challenging the respective judgment and decree. Both the appeals came to be dismissed by learned District Judge-I, Basmathnagar, Dist. Hingoli on 13.04.2012. Hence, these second appeals.

3. Heard learned Advocate Mr. S. R. Patil holding for learned Advocate Mr. P. R. Katneshwarkar for appellants.

4. It has been vehemently submitted on behalf of appellants that both the Courts below have not considered the evidence properly. Though the plaintiffs in both the suits claimed ownership through registered sale-deeds, yet it was not considered that the vendors to the plot, allegedly purchased by the plaintiffs, had no title to sell those plots. In fact, the father of the vendor of the plaintiffs had already sold the property to the defendants. Both the Courts below failed in concluding that the plaintiffs have proved their possession. Without going into the

legal character or rights of the property, the injunction has been clamped on the defendants and, therefore, substantial questions of law are arising in these cases requiring admission of the second appeals.

5. Though the respondent appeared through Advocate, the concerned Advocate was absent.

6. At the outset, it is to be noted that the suit was for permanent injunction. No counter claim was claimed by the defendants in respect of the suit property. Under the said circumstance, when the plaintiffs had come with the case that they had purchased the suit property by way of registered sale-deed executed by one Munjaji Patwe on 08.06.2001 and they produced the original sale-deed, on the basis of which the mutation had taken place, so also they had produced the 7/12 extract of the land, it was sufficient to infer that the plaintiffs are in possession of the suit property referable to full title. Point was raised that the said sale-deed was hit by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is to be noted at the cost of repetition that the defendants had not prayed for any counter claim. Further, even if the sale-deed would have been hit by provisions of certain Act, especially the Fragmentation Act, yet it is for the concerned authority under the Act to deal with the case as per the

procedure under the Act. In these suits, both the Courts were required to adjudicate who was in possession of the suit property on the date of the suit and as aforesaid, it was concluded on the basis of evidence adduced that the plaintiffs are in possession. Now, the defendants had come with the case that the father of the vendor of the plaintiff i.e. Ganpati Munjaji Patwe had sold the suit property on 01.12.1971 to one Laxman Naroba Patwe. Laxman expired in the year 1975, thereafter, there was partition between Laxman's wife Gangabai and son Gajanan and the suit property went to the share of defendant No.1. Thereafter, defendant No.1 sold the said property to defendant No.2 on 28.10.1996. However, in order to prove the same, the defendants have not adduced evidence that Ganpati had sold the said property to Laxman, who was the brother of defendant No.1. Though it was proved that Ganpati was the original owner and Munjaji - the vendor of the plaintiff was his son, yet the fact remains that there was no evidence adduced by defendant No.1 to prove the sale-deed dated 01.12.1971 and, therefore, both the Courts were justified in holding that defendants have failed to prove their title and possession. The possession which was received by the plaintiffs as per their sale-deed dated 08.06.2001 has been protected by both the Courts below and, therefore, it cannot be said that the findings arrived at by the Courts below are perverse. No substantial questions of

law as contemplated under Section 100 of the Code of Civil Procedure are arising in these cases requiring admission of second appeals. Accordingly, both the second appeals stand dismissed.

7. In view of dismissal of both the second appeals, Civil Application Nos.5857 of 2013 and 5856 of 2013 stand disposed of.

[SMT. VIBHA KANKANWADI, J.]

scm