

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.494 OF 2013

DASHRATH S/O RAJINATH SHINDE AND ORS
VERSUS
ANIL @ BHAIRUNATH S/O DEVIDAS GHAVANE AND ORS

...
Mr. A. N. Nagargoje, Advocate for appellants.
Mr. S. G. Chapalgaonkar and Mr. R. P. Dhase, Advocates for respondent
Nos.1 to 8.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30.08.2021

ORDER :-

. Present appeal has been filed by original defendants. Respondents are the original plaintiffs, who had filed Regular Civil Suit No.116 of 1975 before learned IInd Joint Civil Judge Junior Division, Osmanabad for perpetual injunction. The said suit came to be decreed on 19.12.2012. Present appellants had challenged the said judgment and decree before learned Principal District Judge, Osmanabad by filing Regular Civil Appeal No.29 of 2013. The said appeal came to be dismissed on 25.06.2013. Hence, this second appeal.

2. Heard learned Advocate Mr. A. N. Nagargoje for appellants and learned Advocate Mr. S. G. Chapalgaonkar and Mr. R. P. Dhase for

respondent Nos.1 to 8.

3. It has been vehemently submitted on behalf of appellants that both the Courts below have not appreciated the evidence and law points properly. Deceased original plaintiff had claimed his possession over the suit lands on the basis of oral lease from original owner since 1964. He contended that he is cultivating the lands. However, the defendants had obstructed him on the basis of sale-deed dated 25.05.1975. He claimed perpetual injunction. Defendant No.1 had denied any such lease by the predecessor. He claimed that he was put in possession of the land by his vendor on the date of the sale-deed. In fact, there was no necessity for the Trial Court to frame the issue about 'tenancy' and refer it to the competent Tribunal. Both the Courts ought to have considered the actual evidence about possession adduced by both the parties. Voluminous evidence was produced by the appellants to prove their possession. The suit ought to have been dismissed. Substantial questions of law are arising in this case, as the findings arrived at by the Courts below is perverse to the evidence adduced.

4. Per contra, the learned Advocate appearing for respondents supported the reasons given by both the Courts below and submitted that on the facts of the case and assessment of evidence adduced, the

suit has been decreed and appeal has been dismissed. No substantial question of law is arising in this case. This Court cannot re-appreciate the evidence in Second Appeal. The issue regarding 'tenancy' was rightly framed and was referred to Agricultural Lands Tribunal. The said decision has been confirmed by this Court also in Writ Petition.

5. At the outset it is to be noted that the defendants/present appellants cannot be allowed to say that there was no necessity to frame issue regarding tenancy and referring it to competent Court after so many years. It took about 37 years for the decision of the civil suit. Now when that decision has gone against the appellants, they cannot raise such contention. Further, when plaintiffs were seeking relief of injunction on the basis of possession, then they should prove that it is referable to lawful title. Whether in each case, such course is required to be adopted or not need not be gone into, as the present appellants had the opportunity to make such submission before this Court earlier, when they had come under Writ Jurisdiction.

6. Now, the facts remain that the said issue was framed and referred to the competent Court and it has been held that plaintiffs are the tenants of suit lands. They are bound to be in possession unless it is shown by the defendants that the possession of the plaintiffs has been

taken by them after adopting due procedure. Apart from the fact of obstruction to possession of plaintiffs, it can also be seen from the fact that defendants are claiming possession over the property, without being so put by their vendor, had prompted both the Courts below to grant the discretionary relief to the plaintiffs. The discretion has been properly and judiciously exercised, does not require interference by this Court. Hence, no substantial question of law, as contemplated under Section 100 of Code of Civil Procedure is arising in this case, requiring admission of the second appeal. Therefore, the appeal stands dismissed at the threshold.

[SMT. VIBHA KANKANWADI, J.]

scm