

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.400 OF 2018
WITH
CIVIL APPLICATION NO.946 OF 2018**

Sharja Prabhudas Chavan ... Appellant
Vs
Pyarelal Isak Maner ... Respondent
...

Mr. Prithviraj S. Gole i/by Ms. Anusha P. Amin for the Appellant.

Mr. Tejpal S. Ingale for the Respondent.

CORAM : SANDEEP K. SHINDE J.
DATE : 30th MARCH, 2021.

ORAL JUDGMENT :

Appellant/plaintiff's Regular Civil Suit No.201 of 2010 seeking decree of perpetual injunction was dismissed on 27th March, 2014 by Joint Civil Judge, Junior Division, Miraj. Appeal against the said rejection, also met with same fate. As such, plaintiff has preferred this appeal against the decree in Regular Civil Appeal No.81 of 2014 dated 17th June, 2017 by Ad-hoc District Judge-1, Sangli. The suit

property is Plot No.27, Original Gunthewari Plot No.3 situated in City Survey No.36/2 + 3A/2B having area of 0.03 HR, i.e., 300 sq.mtrs. at Sangli, Miraj and Kupwad Municipal Corporation area at Miraj. Plaintiff would assert her possession over the suit land on title.

2 It is plaintiff's case that her husband vide sale deed dated 26th April, 1989 purchased suit plot from Laxman Ramchandra Jadhav. It is plaintiff's case that Jadhav had purchased suit plot/property from Vitthal Bapu Khot vide sale deed dated 15th July, 1985. Apprehending the obstruction to her possession over the suit property, the subject suit was instituted. Indisputably, the plaintiff did not produce title deeds or such revenue entries to substantiate her possession over the suit land. When the suit was posted for final arguments, she had moved an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908. Having regard to the stage at which

application was preferred, the learned Trial Court declined the request. The review of the order was also rejected. These orders were carried before this Court in Writ Petition No.2703 of 2014. On 12th March, 2014, this Court declined to interfere. As such, Writ Petition was dismissed.

3 Be that as it may, in absence of any evidence to hold the plaintiff's possession over the suit land, the suit was dismissed. It may be stated that the defendant would claim possession over the suit property on title. It is her case that original owner of the suit property Vithal Bapu Khot had sold the suit land to him vide sale deed dated 24th March, 1988.

4 The judgment of the Trial Court shows that issue relating to the plaintiff's title to the suit property was framed being Issue No.1 and it was answered in negative.

5 The judgment and the decree of the Trial Court was carried in appeal being Regular Civil Appeal No.81 of 2014. Pending appeal, another application was moved under Order 41 Rule 27 to bring on record title deeds and revenue entries. The said application was rejected by the Appellate Court in view of the order passed by this Court in Writ Petition as aforesaid.

6 Therefore, to say the findings recorded by the Courts below, cannot be said to be perverse as such appeal does not give rise to any substantial questions of law. Appeal is, therefore, dismissed.

7 It may be stated that plaintiff was asserting her possession over the suit property on the basis of registered sale deed dated 26th April, 1989. May be for some reasons sale deed and such other documents could not be produced

before the Trial Court. In the circumstances, although the issue no.1 relating to plaintiff's, title has been answered in negative, it was so answered, in absence of title deeds, production of which was declined. Thus, to be observed that the Trial Court had not gone into or examined, the title of the plaintiff, vis-a-vis the suit land. In the circumstances, if appellant/plaintiff files suit for declaration of her title, finding recorded by the Trial Court as against the issue no.1 Regular Civil Suit No.201 of 2020 shall not preclude her from asserting her title.

8 With these observations, the Second Appeal is rejected. Civil Application is disposed of.

(SANDEEP K. SHINDE, J.)