

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO.356 of 2012

Shri Murlidhar s/o Madhaorao Kalbande,
Aged about 50 years, Occupation : Cultivator,
Resident of : In the house of Shri Satphale,
Zenda Chowk, Mahal, Nagpur.

Appellant
Ori Plaintiff

// VERSUS //

1. Mrs. Rajani w/o Shivchanran Bhandarkar, Aged about 41 years, Occu. Business, Resident of: Plot No.179, Subhedar Layout, Nagpur;
2. Sumit Co-operative Housing Society Limited, Nagpur, through its Secretary Shri Nandkishore s/o Babarao Guhe, Aged about 50 years, Occu. Cultivator, R/o Chitnavispura, Zenda Chowk, Mahal, Nagpur.

..Respondents
Ori.Defendants

Shri S.D. Deshpande, Advocate for the Appellant
Shri P.D. Randive, Advocate for Respondent No.1

**CORAM : ANIL S. KILOR, J.
DATED : 18th NOVEMBER, 2021**

ORAL JUDGMENT : (PER:- ANIL S. KILOR, J.)

This appeal is against a concurrent finding recorded by both the Courts below, holding that there is no cause of action for the plaintiff to claim injunction against defendant No.1 in the suit for permanent and mandatory injunction.

2. The plaintiff is the owner of plot bearing No.1 out of Survey No.153 situated at Mouza Narsala, which he had purchased for a valuable consideration on 20.01.2001. Sumit Cooperative Housing Society Limited, Nagpur/defendant no.2 is the owner of Khasra No.153. The defendant No.2 prepared lay out and plot No.1 sold to the plaintiff. Right from the date of purchase, the plaintiff was the lawful owner of this plot. The name of the plaintiff has been recorded in the record of Gram Panchayat, Narsala on 12.03.2004. The plaintiff is also paying the taxes to Gram Panchayat up to 31.03.2002. He also got the certificate from defendant No.2 for the purpose of making construction over the said plot and defendant No.2 handed over the possession to the plaintiff on 15.02.2001. The plaintiff, before purchasing the said plot, had obtained No Objection Certificate(NOC) from Gram Panchayat Office, Narsala on 12.02.1997. The plot was altered into non-agricultural(NA) by virtue of the order passed by the Tahsildar on 15.07.1998. The name of the plaintiff recorded in 7/12 Extract and other documents.

3. Defendant No.1 claims to have purchased the plot No.1 from Ajni Co-operative Housing Society, Nagpur. This society claims to have purchased one Acre of land from Soma Jarile. So far as Soma Jarile is concerned, he is not owner of the Survey No.153. The real owner of the Survey No.153 were Soma Jarile and his sisters, which they got by virtue of Civil Suit for partition and separation against Soma Jarile. The said suit was decreed and thereafter the present defendant No.2 has prepared layout after having purchased the said property and one of the plot i.e. plot No.1 was sold to the present plaintiff. The 7/12 Extract reveals the

name of Sumit Co-operative Housing Society Limited, Nagpur as owner of the plot.

4. There was litigation between defendant no.1 and Nandkishore Guhe and Jay Ambe Constructions. That litigation was terminated in a decree in favour of Rajani. So far as Ajni Co-operative Housing Society, Nagpur is concerned, it has prepared layout of more than one Acre of which he is not competent to do so and one plot No.7 was sold to defendant No.1. The Civil Suit which was decreed in favour of Rajani, the Nandkishore Guhe had preferred an appeal before the Hon'ble Joint District Judge, Nagpur, in which the order maintaining status quo was made regarding the possession of plot No.7. After passing of decree defendant No.1 tried to encroach upon the plot No.1 and tried to uproot the compound which the plaintiff had fixed for the purpose of safeguarding the property and i.e. why defendant no.2 approached the Hon'ble District Court and obtained an order of status quo in his favour.

5. It is the case of the plaintiff, Nandkishore Guhe is not the owner of Survey No.153 but the Sumit Co-operative Housing Society Limited, Nagpur is the owner through which the present plaintiff has received the title over the same. As the defendant no.1, after the decision of Civil Suit in her favour, tried to uproot the barbed wire compound which the plaintiff had fixed for the purposes of safeguarding the possession of suit plot, the complaint was made by the plaintiff to defendant No.1 and Nandkishore Guhe also. It is stated that Shri Nandkishore Guhe had made an application to the Hon'ble District

Judge, Nagpur and since the plaintiff is not party to that litigation, the defendant No.1 is trying to disturb the lawful possession of plot No.1 and hence the plaintiff is constrained to file this particular suit for declaration, permanent and mandatory injunction and prayed to pass decree for perpetual injunction and restraining defendant no.1 from interfering with the lawful possession of plot No.1 and to pass a decree for mandatory injunction to remove the poles, which has been fixed by defendant No.1.

6. The defendant no.1 appeared and strongly contested the suit by filing her written statement vide Exhibit-12. She denied the entire claim of the plaintiff *in toto*. It is stated that the defendant No.1 is in possession of plot No.7, Khasra No.153 admeasuring 2100 square feet and she is no way concern in respect of the remaining land. The defendant No.2 along with the plaintiff are trying to abuse the process of law by filing frivolous suit and by indulging defendant No.1 unnecessarily.

7. I have heard the learned counsel for the respective parties.

8. This Court, on 19.08.2014 has framed a substantial question of law, which reads thus:

“The Appellate Court having given the finding that the appellant/original plaintiff is in lawful possession of the suit property, whether the decree for injunction as prayed for by the appellant/original plaintiff could have been refused ?”

9. Shri Deshpande, learned counsel for the Appellant submits that once both the Courts-below have held that the plaintiff is the owner of the suit plot, the Courts-below ought to have grant prayer made by the plaintiff for permanent injunction in favour of the plaintiff.

10. Per contra Shri Randive, the learned counsel for the respondent No.1 submits that both the Courts-below have rightly held that no cause of action has arisen for the plaintiff to file the suit as the plot owned by the plaintiff and the plot owned by the defendant No.1 are different and both are not overlapping. Therefore, he submits that no error has been committed by the Courts-below and therefore, he prays for dismissal of the appeal.

11. The learned lower Appellate Court in Paragraph 13 of the Judgment has mentioned four boundaries of the plot owned by the plaintiff and plot owned by the defendant No.1, which are as follows.

“The plaintiff has given the four boundaries of Plot No.1 as follow:

To the East = Plot No.2

To the West = 60’ Road

To the North = 40’ Road

To the South = 30’ Road

While the defendant No.1 has given the four boundaries of her plot as below:

To the East = 25’ Road

To the West = Plot No.6

To the North = Plot No.14

To the South = 50’ Wide Road”

12. The learned counsel for the Appellant is not disputing the four boundaries of the plot owned by the plaintiff and the plot owned by the defendant No.1.

13. In the light of four boundaries of both the plots owned by the plaintiff and the defendant no.1, the Courts below have held that both the plots are not overlapping. Moreover the plaintiff himself is not having knowledge of either any encroachment, obstruction or interference by defendant No.1 or the defendant No.2 has not uttered anything about an encroachment, obstruction or interference by defendant No.1 on the plot of the plaintiff. In view of the said admitted fact, the Court has held that in absence of any obstruction or interference by defendant no.1 to the possession of the plaintiff, there is no cause of action for the plaintiff to pray for injunction against the defendant no.1.

14. Learned counsel for the Appellant has failed to point out any perversity in the findings recorded by the learned Courts-below. In that view of the matter, I do not find any merit in the present case and accordingly, I have answered the substantial question of law in the above terms.

15. In the light of the above referred observations, I pass the following order:

16. The Appeal is **dismissed**. No order as to costs.

[ANIL S. KILOR, J.]