

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**942 SECOND APPEAL NO.84 OF 2022
WITH CA/2337/2022 IN SA/84/2022**

Dharamraj Girijaram Bankar
Age 47 years, Occu. Business,
R/o Radha-Swami Colony,
Jatwada Road, Aurangabad

.. Appellant
(Orig. Defendant)

VERSUS

- 1] Leelabai Gopalrao Sonwane
Age 49 years, Occu. Service,
R/o Lonwadi, Ta. Sillod,
District Aurangabad
- 2] Sandulal Mahadulal Gaikwad
Died, against whom, the proceeding
is abated

.. Respondents
(R-1 Orig. Plaintiff)

...
Advocate for Appellant : Mr. R.P. Adgaonkar h/f. Mr. Sachin S. Panale
Advocate for the respondent no. 1 : Mr. G.M. Hiwale
...

CORAM : MANGESH S. PATIL, J.

DATE : 15 MARCH 2022

ORAL ORDER :

This is a second appeal by the original defendant no. 2 being aggrieved and dis-satisfied by the concurrent findings of the courts below decreeing the suit of the respondent no. 1 for possession based on title over the suit property.

2. I have heard the learned advocates of both the sides at the stage of admission.

3. Claiming that she has purchased the suit plot from erstwhile owner Mr. Jadhav, but complaining that appellant has taken forcible possession of it, she claimed possession.

4. The appellant contested the suit, disputed description of the suit plot. He contended that he purchased the plot no. 4-C under a registered sale deed and was holding the possession over the plot. However, without describing the plot number in the plaint she was trying to recover possession of the plot owned by him under the pretext that in-fact, it is the suit plot.

5. It is quite apparent that going by the stand being taken by the appellant in his written statement as also during his testimony, though he is asserting about having purchased plot no. 4-C under a sale deed, the description of that plot given by him does not tally with the description of the suit plot. Though some arguments were advanced before the courts below to the effect that the respondent no. 1 had failed to prove the sale under which she claimed to have purchased the suit plot, in real sense the dispute was not in respect of her title, still, she examined the administrator of the co-operative housing society of which the suit plot is a part and parcel.

6. Apart from the fact that the original sale deed was produced on record and was exhibited without any demur, as has been rightly pointed out by the courts below, the testimony of this

administrator was enough for the courts below to take a plausible view that it was sufficient to demonstrate her title over the suit property.

7. As against this, as cursorily mentioned herein-above though it is the stand of the appellant that under the guise of recovering possession of the suit property, in-fact, the respondent no. 1 is trying to grab his plot no. 4-C, so long as, the description of these two plots do not tally, the contention of the appellant needs to be discarded.

8. Being a second appeal, this court has inherent limitation in undertaking a further scrutiny unless the decisions *prima facie* demonstrate that the courts below have not appreciated the evidence on record and other attending circumstances in the proper perspective and there is an element of perversity and arbitrariness.

9. This court, in a given case, can cause interference in the concurrent findings of the facts, if it can be demonstrated that the lower courts have referred to some irrelevant material or have overlooked some material one. Even that is not the case in the matter in hand.

10. Since the courts below have recorded concurrent findings of facts based on apparently correct appreciation of the matter in controversy and the evidence on record including the specific admission in the cross-examination of the appellant regarding title of the respondent no.1 over the suit property and that he is asserting that

it is his plot, no exception can be taken to the conclusions drawn by the courts below.

11. No substantial question of law arises for the determination of this court.

12. Second appeal is dismissed with costs.

13. Pending civil application is disposed of.

[MANGESH S. PATIL]
JUDGE

arp/