

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 376 OF 2022  
WITH CA/8772/2022 IN SA/376/2022**

Narayan Pandu Sarowar and Others ..APPELLANTS

VERSUS

Yamunabai Baburao Kotkar ..RESPONDENT

Mr. Y.D. Kale, Advocate for appellants

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CORAM : R.G. AVACHAT, J.  
DATE : 27<sup>th</sup> JUNE, 2022

**PER COURT :**

1. This is original defendants' second appeal. The trial Court, by decree of perpetual injunction, restrained them from obstructing the respondent – original plaintiff's possession over the suit land (3R land specifically described in the plaint). The first appellate Court has confirmed the judgment and decree passed by the trial Court. Hence the present appeal.

2. Learned counsel for the appellants would submit that the suit land over which the respondent – plaintiff claims ownership and possession had in fact been acquired by the government for the purpose of Garaj-Babhulgaon road. The land belonging to the appellant adjoins the suit land. During

pendency of the suit or appeal, the respondent – plaintiff did not ask for measurement of the suit land. The measurement of the suit land was made before filing of the suit. The map drawn by the surveyor has, therefore, no evidential value. The Court has also not suo moto appointed the Court Commissioner for measurement of the suit land. Learned counsel, in support of his contentions, has relied on the following authorities :-

- (i) **Niranjanabai Chandrakam Vira Vs. Prainilabai Balkrishna Zade**  
**2004 (3) ALL MR 619**
- (ii) **Kishanlal Maniklal Rathi Vs. Dinkar Yashwant Patil**  
**2003 (4) ALL MR 1083**
- (iii) **Kashinath Vs. Purushottam Tulshiram Tekade and Ors.**  
**2005 (4) ALL MR 519**

He would further submit that it was the suit for injunction simplicitor. When title of the plaintiff to the suit land was disputed, the suit should have been filed for declaration of title. The suit was, therefore, not maintainable. According to learned counsel, the substantial question of law, therefore, arises in the present appeal to the effect as to whether the respondent – plaintiff could be said to have proved his possession over the suit land.

3. Heard. Considered the submissions advanced. Perused the judgments delivered by the trial Court and the first appellate Court as well.

4. The suit land admeasures 3R. Onto the west, there is land belonging to the appellants/defendants. The lands of both the appellants and respondent are said to have been divided by an embankment. Admittedly, the appellants did not claim any right, title and interest in the suit land. It was suggested to the plaintiff during her cross-examination that the suit land has been acquired by the government for the purpose of Garaj-Babhulgaon road and she is, therefore, not in a lawful possession of the suit land. There is evidence to indicate that on 01<sup>st</sup> June, 1988 one Sonyabapu Vitthal Sarowar sold 10R land to various persons including the father of the respondent-plaintiff. The trial Court has observed that acquisition of the land was made way back in 1979 i.e. before the land was purchased by the respondent-plaintiff's father in 1988. The trial Court, therefore, rightly negated the contention of the appellants/defendants that the suit land did vest in the government. Admittedly, the respondent-plaintiff's name figured as the owner in possession of the suit land, in 7/12 extract.

5. It is true that before institution of suit, the land was measured. Admittedly, the measurement was carried out by the Taluka Inspector of Land Records. At the time of measurement, the appellants/defendants were present. Section 83 of the Evidence Act requires that map drawn for any particular/private purpose shall be proved to be correct. It, therefore, cannot be said that the survey/measurement conducted before institution of the suit

cannot take character of evidence and is thus inadmissible. What the said section requires is that the maps or plans made for the purposes of any cause must be proved to be accurate. When the surveyor gave his evidence in proof of measurement, it appears that nothing was brought on record to suggest him to have faltered in survey procedure, and therefore, his report alongwith the map is not accurate one. The appellants/defendants did not avail opportunity to seek re-measurement of the land. It is reiterated that they did not claim right, title and interest in the suit land. It is their case that the suit land has been acquired by government for the road, and therefore, the respondent-plaintiff's possession is unlawful.

6. The findings given by the trial Court and affirmed by the first appellate Court as regards holding the respondent/plaintiff to have been in possession of the suit land appear to be in consonance with the evidence on record. It is not that the suit for injunction simplicitor is not maintainable. The appellants/defendants did not set up lawful claim of title over the suit land. It also appears that such ground was not raised before both the Courts below. Reliance on the judgments of the Apex Court is, therefore, of no assistance to the appellants/defendants.

7. In view of this Court, holding the respondent/plaintiff in possession of the suit land is a finding of fact recorded by both the Courts

below. This Court finds no substantial question of law to have been involved in this appeal. Needless to mention, the judgment and decree binds the parties to the suit or persons claiming thereunder. This Court, therefore, finds no case even to issue notice to the respondent. Second appeal, therefore, fails. Same stands disposed of accordingly. In view of disposal of second appeal, nothing survives in the civil application. Same stands disposed of accordingly.

**( R.G. AVACHAT, J. )**

SSD