

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

**SECOND APPEAL NO.24 OF 2022
WITH CA/579/2022 IN SA/24/2012**

Kantabai w/o Gangadhar Salve,
Aged 54 years, Occ. Service,
R/o. Milind Nagar, Osmanpura,
Aurangabad.

... Appellants
(Orig. Defendant No. 1)

VERSUS.

1) Tulsabai w/o Pundlik Garbade,
Age 64 years, Occ. Labourer.
R/o. House No. 5-4-68/223,
Milind Nagar, Osmanpura,
Aurangabad.

2) Ravi s/o Gangadhar Salve,
Aged 36 years, Occ. Service,
r/o. Prabuddha Nagar, Near
Panchakki, Aurangabad.

... (Respondent No.1 is original
plaintiff and respondents Nos.
2 to 5 are original defts. No.2to5)

3) Mahendra s/o Gangadhar Salve,
Age 34 years, Occ. Business,
R/o. Prabuddha Nagar, Near
Panchakki, Aurangabad.

4) Janardhan s/o Gangadhar Salve,
Age 33 years, Occ. Labourer,
R/o. Prabuddha Nagar, Near
Panchakki, Aurangabad.

5) Shakuntalabai Bhanudas Dabhade,
Aged 54 years, Occ. Household,
R/o. Near Railway Track, Milind Nagar,
Osmanpura, Aurangabad.

... Respondents

...

Advocate for Appellants : Mr. Shriram M. Kamble.

CORAM : MANGESH S. PATIL, J.
DATE : 04.02.2022.

PER COURT :

Heard the learned advocate for the appellant.

2. The original defendant is challenging the concurrent findings of facts of the courts below holding the respondent/plaintiff to be entitled to the relief of mandatory and perpetual injunction.

3. The learned advocate for the appellant vehemently submits that though the findings of facts are concurrent, both the courts below have grossly erred in appreciating the evidence on the record. Admittedly, the suit property situates in a slum and neither of the parties have derived the title on the basis of any transfer of property as recognized by law. In view of such peculiar state of affairs, both the courts had erred in overlooking the fact that except the tax receipts and electricity bills, the respondent did not possess any other evidence and none was led before the trial court to demonstrate that she was ever holding possession of the suit property but was subsequently dispossessed. A substantial questions of law, therefore, arise as mentioned in appeal memo.

4. I have considered the submissions and perused the judgments of both the courts below. As can be appreciated the respondent has described the suit property as bearing Municipal No. 5-4-68/223 more particularly described in paragraph No. 1 of the plaint precisely giving the boundaries. Conspicuously, the property of the appellant does not seem to be adjacent to the suit property.

5. There is no dispute about the fact that the suit property situates in a slum and all the persons holding different portions since long do not possess any document of title. The appellate court has rightly appreciated this vital fact and has duly considered the matter in controversy being one touching the aspect of possessory title.

6. Once it stands admitted that neither of the parties can have any document of title to establish their right to the suit property, as rightly done by the courts below, inferences were required to be drawn on the basis of preponderance of probability. It is in tune with such state of affairs they have pointed out and referred to the evidence that was available in the form of Municipal tax receipts and electricity bills clearly demonstrating that the respondent was paying both these government dues of the suit property. As against this there was clearly a dearth of evidence even to remotely suggest any interest of the appellant in the suit property, sufficient enough to draw any inference regarding she being in possession.

7. With such evidence, the courts below were left with no alternative but to decree the suit. The conclusions arrived at are clearly based on correct appreciation of the matter in controversy and giving appropriate weight to the evidence that was led before them.

8. No substantial question of law arises in the appeal. The second appeal is dismissed in limine.

9. Pending Civil Application stands disposed of.

(MANGESH S. PATIL, J.)

mkd/-