

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO. 592 OF 2014
AND
CIVIL APPLICATION NO. 627 OF 2022;
CIVIL APPLICATION NO. 628 OF 2022**

- 1] Shivaji S/o Krishna Chikate,
Age : 67 years, Occu. : Agril.,
R/o Warvanti, Tq. & Dist. Latur
- 2] Shantabai w/o Haribhau Pandhare,
Age : 56 years, Occu : Household,
- 3] Rajabhau S/o Haribhau Pandhare,
Age : 50 years, Occu. : Agril.,
- 4] Pradeep S/o Haribhau Pandhare,
Age : 42 years, Occu. : Service,
- 5] Prakash S/o Haribhau Pandhare,
Age : 40 years, Occu : Service,
Nos. 2 to 5 R/o Ghutewada,
Opp. S.T. Workshop, Dnyaneshwar
Nagar, Ambajogai Road, Latur

.. Appellants
(Orig. Plaintiffs)

VERSUS

Sidram S/o Guruling Mahajan,
Age : 65 years, Occu. : Agril.,
R/o Azad Chowk, Latur,
Tq. & Dist. Latur

.. Respondent
(Orig. Defendant)

...
Mr. B.N. Patil, Advocate for appellants
Mr. S.S. Halkude, Advocate for the respondent
...

CORAM : MANGESH S. PATIL, J.

DATE : 25 FEBRUARY 2022

ORAL ORDER :

This is a second appeal by the original plaintiff who has failed to obtain a decree for perpetual injunction simplicitor and even

his appeal has been dismissed by lower appellate court by judgment and order under challenge.

2. I have heard both the sides.

3. The facts are not in dispute except the possession over the suit field.

4. The respondent's father was the owner of the suit field. Claiming that he had agreed to sell it to the appellant by the agreement dated 05-01-1983, the appellant preferred Regular Civil Suit no. 227 of 2009 seeking specific performance. The suit was dismissed. The Regular Civil Appeal no. 45 of 1995 preferred by him was also dismissed and Second Appeal no. 847 of 1999 was dismissed summarily.

5. Asserting that even if his claim for specific performance was turned down, he continued to be in possession of the suit field the appellant filed the present suit seeking to protect his possession allegedly delivered to him under the selfsame agreement.

6. Both the courts below have recorded concurrent findings that there was no agreement and consequently no possession was ever delivered to the appellant under that agreement. Obviously, as far as the finding recorded in the earlier round of litigation about the fact that there was no agreement whereby the father of the respondent

had agreed to sell the suit field to the appellant, the plea asserting his possession in the suit field falls to the ground.

7. In view of the decision in the case of **Damodar Lal V. Sohan Devi and others; AIR 2016 SC 262** assuming for the sake of arguments that the concurrent findings of facts of the courts below are erroneous, this court cannot interfere in exercise of the powers under section 100 of the Code of Civil Procedure.

8. Besides, there would be one more hurdle for the appellant to cross. If at all he had applied for and was seeking specific performance of the agreement to sell the suit field simultaneously asserting about the possession having been delivered under that agreement, the relief of injunction was available to be had even in the earlier round of litigation. He having failed to claim it in the earlier round, the present suit would be barred by constructive *res judicata*.

9. In view of such state-of-affairs, no substantial question of law arises in the second appeal. It is dismissed.

10. Pending civil applications stand disposed of.

[MANGESH S. PATIL]
JUDGE

arp/