

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

SECOND APPEAL NO.498 OF 2021

Hanumant Shankar Kalokhe And Ors.

... Appellants.

Versus

Shivaji Balalsaheb Londhe And Ors.

... Respondents.

...

Mr. Datta A.Madake, Advocate for Appellants.

...

CORAM : MANGESH S. PATIL, J.

DATED : 13 APRIL 2022

PER COURT :

1. The original defendants have preferred this appeal against concurrent findings of the courts below holding the respondents who are the original plaintiffs to be in possession of the suit property, albeit the trial court had held them to be in possession of 1 Hector 86 Are portion, whereas, the lower appellate court has concluded that they were in possession of 3 Acre portion from the suit property and confirmed the decree passed in their favour by the trial court holding them entitled to protect their possession over this 3 Acre portion.

2. I have heard Mr. Madake for the appellants.

3. The respondents claiming themselves to have become owner by adverse possession sought a declaration and prayed for perpetual injunction restraining the appellants from obstructing their possession over the suit property which is described as portion admeasuring 1 Hecter 86 Are from Gut No. 530.

4. The appellants contested the suit and denied everything including respondent's possession over the suit property. The trial court refused to grant declaration of the respondents having become owner by adverse possession, but found them to be in possession of the suit property and therefore granted perpetual injunction.

5. Since the suit was decreed partly, both the sides preferred separate appeals, R.C.A. No. 68 of 2014 was filed by the appellants and R.C.A. No. 71 of 2014 was filed by the respondents. By the common judgment and order under challenge both the appeals have been dismissed, however, the decree has been modified to the extent that the respondents have been held entitled to perpetual injunction only to the extent of 3 Acre portion.

6. Admittedly, the respondents have not challenged the judgment passed by the lower appellate court. Needless to state that this has resulted in confirmation of the decision of the trial court holding them not entitle to any declaration of having become owner of the suit property by adverse possession.

7. So far as the question of possession is concerned, it is a pure question of fact. Both the courts below on the basis of the evidence available before them reached a plausible conclusion upholding possession of the respondents, albeit the lower appellate court has found them to be in possession of only 3 Acre portion from the suit property and not 1 Hectar 86 Are as was held by the trial court.

8. After going through the evidence the courts below have reached a plausible conclusion. This Court cannot undertake any further scrutiny of facts in view of the limitations described under section 100 of the Code of Civil Procedure and as elaborately explained time and again by the Supreme Court in several matters.

9. Suffice for the purpose to refer to the decision and observation of the Supreme Court in the matter of **Hero Vinoth (minor) Vs. Seshammal; (2006) 5 SCC 545**, para 19 and **Narayanan Rajendran and Ors. Vs. Lekshmy Sarojini and Ors.; (2009) 5 SCC 264**, para 64 :

“19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however,

interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.”

“64. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the Section is that the appeal shall be heard only on that question.”

10. No substantial question of law arises for determination in this second appeal. It is dismissed.

(MANGESH S. PATIL, J.)