

Pallavi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.77 OF 2022

Suresh Rangarao Jadhav and Anr.	... Appellants
Versus	
Narayan Babu Mane and Ors.	... Respondents

Mr. Kuldeep Nikam a/w Om Latpate, for the Appellants.

CORAM: MADHAV J. JAMDAR, J.
DATE : 14th DECEMBER, 2022

P.C.:

1. Heard Mr. Kuldeep Nikam, learned counsel appearing for the Appellants.
2. Appellants are the original defendant nos.1 and 3. The suit bearing Reg. Civil Suit No.103 of 1995 was filed by the Respondent No.1 seeking injunction. The learned Trial Court found that Respondent No.1 is in legal possession of the suit property and that the defendants are obstructing them illegally and therefore, decreed the suit. The Appellate Court dismissed the Appeal filed by the present Appellants.
3. Mr. Nikam, learned counsel for the Appellants submitted that the substantial question of law involved in this Second Appeal is whether proper opportunity is given to the Appellants. He submitted

that the said Reg. Civil Suit No.103 of 1995 was transferred firstly to the Court of learned Jt. Civil Judge, Junior Division, Tasgaon on 13th June 2005 and thereafter, to the Court of learned 2nd Joint Civil Judge, Junior Division, Tasgaon on 11th April 2008. He submitted that after such transfer, fresh notice should have been issued to the Appellants and as no notice was issued proper opportunity is denied to him.

4. The learned First Appellate Court after considering the said submission found that the suit was transferred twice from Principal Court to Joint Court and thereafter, the 2nd Joint Court. The learned First Appellate Court further found that Advocate of the defendants was regularly attending the suit on behalf of the defendants in the Court where the suit was transferred. The learned First Appellate Court, in paragraph 16, has given very valid reasons for rejecting the said submission. Both the Courts below have concurrently held that the plaintiff has proved his lawful possession over the suit property and that the defendants are obstructing his possession and therefore, granted injunction.

5. Mr. Nikam has submitted that another substantial question of law involved in the present Appeal is that adverse inference should be drawn against the Respondents/plaintiff as the plaintiff has not entered into the witness box but his Power of Attorney has been

examined. The Constituted Attorney of plaintiff is his wife Mirabai Mane - PW-1. It has come on record that the plaintiff is not keeping good health and therefore, he authorised his wife to look after his landed property and therefore, she is looking after the suit land. The learned First Appellate Court has recorded a finding that the said Mirabai deposed in the Court on the basis of her personal knowledge and as witness of plaintiff. Therefore, there is no substance in the contention that as the plaintiff has not entered into the witness box and the plaintiff examined his Power of Attorney adverse inference should be drawn against plaintiff. This is not a case where the Power of Attorney is stranger to the affairs of the suit land. In fact, the Constituted Attorney i.e. wife of Respondent No.1 is looking after the suit land. Therefore, there is no substance in the said contention.

6. In view of concurrent finding of fact, there is no substance in the present Second Appeal. Second Appeal is dismissed with no order as to costs.

(MADHAV J. JAMDAR, J.)