

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.112 OF 2022
WITH
INTERIM APPLICATION NO.670 OF 2022
IN
SECOND APPEAL NO.112 OF 2022**

UTTAM TATYA MANE)...APPELLANT

V/s.

JAVED IBRAHIM KAZI AND OTHERS)...RESPONDENTS

Mr.Machhindra A. Patil, Advocate for the Appellant.

Mr.Vaibhav Ugle, Advocate for the Respondents.

CORAM : SMT. BHARATI DANGRE, J.

DATE : 6th APRIL 2022

P.C. :

1 Heard the learned counsel for the appellant and the learned counsel for the respondents.

2 The appellant, who is the original plaintiff, filed a civil suit for seeking injunction against the defendants and restraining

them from obstructing his possession over land gat no.261/A/2 admeasuring 1 H 72 Are situated within the limits of village Khedbhose, Taluka Pandharpur, District Solapur.

3 The plaint was based on the premise that the plaintiff has purchased the aforesaid land and it is bounded towards east by land gat no.274/1, towards south by land gat no.254, towards west by land gat no.260/1 and 260/2 and towards north by land gat no.261/A. The plaint averred that the suit land is irrigated and he is taking cash crops in the said land. The relief in the suit is based on a pleading that the defendants have no concern with the suit property but in the month of April 2007, they let their cattle in the suit land and caused obstruction in peaceful enjoyment of the suit land. This was put as the cause of action to claim the simplicitor injunction against the defendants.

4 On being noticed, the defendants filed their written statement and denied the averments in the plaint. A specific stand was taken by the defendants to the effect that land gat

no.261 was originally owned by one Vasant Ganesh Kulkarni and the State of Maharashtra acquired the said land for rehabilitation of Ujni Dam project affected persons and it acquired 0.81 Are of land from the western portion thereof in the year 1976. It is found that the entire portion is taken in south-north direction. Consequently, gat no.261 came to be bifurcated into two portions 261/A and 261/B, former portion being retained by owner i.e. Vasant Kulkarni whereas 261/B northern portion was allotted for project as mentioned in the written statement. The piece of land admeasuring 40 Are is allotted to one Balbhim Govind Devkar and Ankush Govind Devkar was allotted gat no.260/B/1 whereas gat no.261/B/1 was allotted to one Bapu Shripati Gaikwad.

5 The defendants particularly pleaded that they have purchased the said land from owner Bapu Shripati Gaikwad by registered sale deed and it is property existing existing from the suit property.

6 Based on aforesaid pleadings, learned Civil Judge, Pandharpur framed the following issues :

- i) Whether the plaintiff has proved his possession over the suit land ?
- ii) Whether the plaintiff has proved that defendants had obstructed his physical possession ?
- iii) Whether the plaintiff is entitled for injunction ?

All the three points came to be answered in negative on the basis of evidence adduced before the learned Judge, which included oral evidence as well as the 7/12 extract which were produced.

The said finding is upheld by the appellate Court by referring to the testimony of DW1 and DW2.

7 It is this concurrent finding which is sought to be assailed in the present appeal. On perusal of the facts involved and as appreciated by the Courts below, the admission given by the plaintiff to the effect that land gat no.261 was initially admeasuring 12 Acre and 30 gunthas lying in east-west direction and out of that western portion admeasuring 81 Are spread in

south-north direction was acquired by the State of Maharashtra for rehabilitation of Ujni dam project affected persons and this area was given separate number being gat no.261/3. The plaintiff, however, has feigned ignorance about the preposition which was put to him in the cross-examination that the land acquired by the Government was given gat no.261/B and the remaining land out of gat no.261 located towards eastern side was given gat no.261/A.

8 From the evidence produced before the Court, the Court returned a finding that the plaintiff has failed to prove his possession over the land gat no.261/A/2 upto adjoining land gat no.260/1 which is intercepted by land situated in gat no.261/B/1 and out of that piece of land defendants claim to have purchased southern portion admeasuring 1 Acre from its erstwhile owner Bapu Gaikwad. In the wake of aforesaid finding rendered on facts, the claim of the plaintiff that the defendants have obstructed his peaceful possession over the suit property i.e. gat no.261/A/2, was held to be not proved, since the defendants

were occupying distinct portion of land. The Courts below arrived at a conclusion that the plaintiff failed to prove its case.

9 On perusal of the reasoning given by the Courts below which is concurrent in nature, I do not find any substantial question of law arriving in the factual aspect. Considering the evidence produced on record, the Courts below have appreciated the evidence and rendered a finding against the plaintiff and denied him injunction and has rightly disposed of the suit.

10 Since the appeal lacks substantial question of law, it stands dismissed.

As a consequence, Interim Application No.670 of 2022 stands disposed of.

(BHARATI DANGRE, J.)