

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.121 OF 2022
WITH
INTERIM APPLICATION NO.753 OF 2022
IN
SECOND APPEAL NO.121 OF 2022**

UTTAM TATYA MANE AND ANOTHER)...APPELLANTS

V/s.

JAVED IBRAHIM KAZI AND ANOTHER)...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 appellants and the learned counsel for the respondents. This second appeal is filed against the judgment and order dated 27th October 2021 delivered by the learned District Judge-2, Pandharpur, District Solapur in Regular Civil Appeal No.34 of 2017, thereby

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overturning the judgment delivered by the Civil Judge, Junior Division, Pandharpur in Regular Civil Suit No.88 of 2008 on dated 2nd May 2016.

2 The bare minimum facts necessary to be narrated, in order to appreciate whether any substantial question of law arises in the appeal is that the plaintiff Javed Kazi filed a suit for injunction, apprehending that his lawful possession over the suit property would be disturbed by the defendants. The suit property is described by him as an agricultural land located in Gat no.261/2/1, with the boundaries set out therein. The plaintiffs pleaded that, the original Gat no.261 belonged to one Vasant Kulkarni, which came to be bifurcated who continued to remain in possession of new Gat no.261/A. Whereas new Gat no.261/B was allotted to Mr.Devkar and the remaining southern portion was allotted to Bapu Gaikwad and was given new Gat no.261/B/1. He pleaded in the plaint that he purchased the property from one Bapu Gaikwad.

3 In the backdrop of the peculiar facts, the trial Court framed an issue as to whether the plaintiff has proved his ownership, possession and use of the suit property and this issue came to be answered in affirmative, on appreciating the evidence brought on record. As regards the second issue as to whether the defendants had obstructed his peaceful possession, it was answered in the negative, since there was no apprehension that the property of the plaintiff being encroached by the defendants, the relief of perpetual injunction was declined and the suit was dismissed.

4 The appellate Court re-framed the issues in appeal, as point for consideration, and answering the point so formulated to the following effect – “Does plaintiff prove that defendants caused obstruction in his possession over the suit land” and it has been answered in the negative.

As a consequence, it was held that the plaintiff was not entitled for injunction, but surprisingly, answering both the issues in negative, the learned Judge, allowed the appeal by recording a specific reasoning in paragraph 13 of the impugned judgment,

while determining, whether the peaceful enjoyment and possession of the plaintiff is threatened by the defendants. The learned Judge referred to and relied upon the stand taken in the written statement by the defendants and has accepted the same as animus to challenge plaintiffs ownership and possession over the suit land, only to cause apprehension in the mind of the plaintiff, on the aspect that he may be dispossessed from the suit land and this was considered to be the cause of action accruing to the plaintiff to sue the defendants and locus standi, to have the relief of perpetual injunction as prayed for.

5 The aforesaid reasoning in absence of any proof being adduced to the effect, that there is any attempt of disturbance at the instance of the defendants in the peaceful enjoyment of the suit land and in the original suit when exactly opposite situation was contemplated, the appeal is allowed, recording that the Civil Judge has erred in recording that plaintiffs have failed to establish, that there is a threat to the peaceful enjoyment and possession of the property.

6 In light of the evidence on record, the learned appellate Court has clearly erred in recording its finding that the plaintiff has proved the need for injunction, merely in the light of a statement made in the written statement and since they had challenged his ownership and possession, it is wrongly recorded that apprehension was well founded.

7 In the wake of the above, since the substantial questions of law involved in the appeal, as formulated in ground (d) and ground (f) to the following effect :

“(d) Whether the Appellate Court was allowing the Appeal filed by the Respondent No.1/Plaintiff in the said Appeal the Ld. District Judge framed the issues and the said issues given finding in a negative all the points and whereas passing the Judgment and decree contrary to the issue framed by the Ld. Appellate Court ?”

“(f) Whether the Appellate Court were justified in allowing the Appeal filed by the Respondent No. 1 though the Appellant could not identify the location of the suit property in his evidence and the Ld. Trial Judge dismissed the suit on these ground and Appellate Court allow his appeal and granted the injunction against the Defendant No.1 was legal and proper ?”

The appeal deserves to be allowed by answering it to the effect that the appellate Court was not justified in disturbing the finding rendered by the trial Court, particularly when all the issues framed are answered in the negative.

8 The appeal is, therefore, allowed by setting aside the impugned judgment passed by the District Judge, Pandharpur and restoring the judgment of the Civil Judge, Junior Division, Pandharpur in R.C.S. No. 88 of 2008 dated 2nd May 2016.

No orders as to costs.

(BHARATI DANGRE, J.)