

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

**SECOND APPEAL NO. 895 OF 2015
WITH
CIVIL APPLICATION NO. 1962 OF 2015
In
SECOND APPEAL NO. 895 OF 2015**

Shri. Abasaheb Govindrao Shinde & Ors.APPELLANTS

V/S

Prabhakar Kashinath Shinde & Anr.RESPONDENTS

Mr. Prabhanjan Gujar for the Appellants

Mr. Pratik Rahade i/b. Adv. Pramod N. Joshi for the respondents

CORAM : NITIN W. SAMBRE, J.

DATED : 14th NOVEMBER, 2022

P.C.:

1. This appeal is against the current findings recorded by both the Courts below wherein the appellants/defendants have suffered decree for injunction, as the respondents/plaintiffs claim to be having title over the suit property. In the plaint the suit property specifically described by the respondents/plaintiffs is as under:

"Description of the property:

The land Old Survey No. 88/1, New Survey No. 88/1 to 4/1 and 88/1 to 4/4 admeasuring about 2.06 Hectors excluding northern portion of 0.86 Hector. Thus, the Southern portion admeasuring about 1.20 Hectors is the subject matter of the suit. The said property is more specifically described in plaint para no .1."

2. The respondents/plaintiffs filed suit with specific averments

that they are the owners of the southern side of the property whereas northern side was developed by the appellants/defendants.

3. The appellants/defendants denied the title of the respondents/plaintiffs and has claimed that they have title over the 0.81R land. It appears that both the Courts below decreed the suit to the extent of excluding 0.86R land (including the land of defendants i.e. 0.81R) from the northern side. The appellants are claiming their title only to the extent of 0.81R land though there is no title deed to that effect in their favour.

4. In this background, Mr. Gujar while assailing the concurrent findings would try to canvass following questions of law-

(a) Once the title of the plaintiffs/respondents were denied, the claim ought to have been for declaration of title u/s. 34 of Specific Relief Act and not for simplicitor injunction.

(b) The respondents/plaintiffs have come out with the case of transfer of the plots in favour of the third party who were appropriate parties to the suit proceedings and were not joined and as such, the suit suffers from non-joinder of the party.

5. Learned counsel for the respondents/plaintiffs would support the judgments, as according to him both the Courts have concurrently held against the appellants/defendants, not only of

having title to the suit property but also about excluding the land covered in the claim put forth by the appellants/defendants in the written statements.

6. I have appreciated the said submissions.

7. The Trial Court framed following issues, which reads thus:

Issues No.	Issues	Findings.
1.	Do plaintiffs prove that, they are the owner and possessors of the disputed suit plot?	.. in affirmative
2	Do they further prove that, the defendants are obstructing their possession over the said disputed plot?	.. in affirmative
3	Whether plaintiff are entitled to the relief of perpetual injunction as prayed for?	.. in affirmative
4	What order and decree?	As per final order

8. The Trial Court specifically answered the issue - as to the ownership and possession of the disputed suit plots in favour of the respondents/plaintiffs. Once such issue in the backdrop of the rival claim was framed and answered, it was expected of the appellants to demonstrate that either they have title to the suit property or that they remained in permissive possession even of the suit property which they have failed.

9. In this background, the support drawn from the judgment of

the Apex Court in the matter of ***Jharkhand State Housing Board vs Didar Singh and Another (2019) 17 SCC 692*** will be hardly of any assistance or support as both the Courts have specifically recorded findings as regards the title of the respondents/plaintiffs to the property as described in the plaint.

10. As far as the second contention as regards the non-joinder of appropriate parties is concerned, the said non-joinder has hardly any impact over the rights of the appellants. It is not the case of the appellants that such purchasers of the plot which were sold by the respondents have in any manner encroached on the property of the appellants.

11. The fact remains that the land, not only to the extent of 0.81R to which the appellants are claiming title but in addition to same 0.5R of land i.e. total 0.86R lands towards northern side to which the appellants claim title is already excluded from the suit property.

12. In this backdrop, having regard to the concurrent findings of facts and the absence of specific title of the appellants to the suit property, no case for indulgence to the Second Appellate Court jurisdiction for want of question of law is made out. As such same stands dismissed with costs.

13. Pending application also stands disposed of.

(NITIN W. SAMBRE, J.)

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