

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

**SECOND APPEAL NO.843 OF 2016
WITH CA/15625/2016 IN SA/843/2016 WITH CA/13705/2022
IN SA/843/2016**

**SHIVAJI MANIKRAO SHINDE
VERSUS
SMT. UMABAI CHANDRAKANT KALE AND ORS**

Mr. N. P. Patil, Advocate for the appellant
Mr. M. L. Dharashive, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 29th MARCH, 2023

PER COURT :-

1. Heard.
2. This second appeal takes exception to the judgment and order dated 30/09/2015 passed by the District Judge-1, Latur in RCA No. 50/2011 confirming the judgment and order dated 03/02/2011 in RCS No. 291/2004.
3. Appellant is the original plaintiff and has filed suit for perpetual injunction against the defendant obstructing them from interfering into the possession of the plaintiff over the suit property. It is the contention of the plaintiff that he has become owner of the suit property on the basis of sale deed dated 29/04/1999 executed by

Manohar Krishna Kale, father-in-law defendant No.1 and further claimed to be in possession of the suit property since then.

4. In written statement, the defendants disputed the said contention of the plaintiff and has specifically contended that the plaintiff is not in possession of the suit property and it is specifically averred that defendant No.2 is in possession thereof.

5. Learned counsel for the appellant states that the learned Trial Court as well as the First Appellate Court committed error in not considering the documentary evidence on record in the form of sale deed in respect of suit property as well as the 7x12 extract in respect of the suit property which shows plaintiff to be occupier thereof.

6. In the suit for perpetual injunction, it is obligatory on the part of the plaintiff to establish his title as well as possession over the suit property. It is recorded by the learned Trial Court as well as the First Appellate Court that the plaintiff in his cross examination has given candid admission about defendant No.2 being in possession of the suit property. The learned counsel for the appellant was unable to show that the said finding recorded by both Courts is not in consonance with the evidence on record. Once the plaintiff admits that he is not in possession

and defendant No.2 is in possession of the suit property, the suit for perpetual injunction against defendants must fail.

7. In so far as application under Order XLI Rule 27 of CPC for producing 7x12 extract on record is concerned, the admission of the plaintiff is the best evidence to hold that the defendant No.2 is in possession of the suit property. Any amount of additional evidence such as 7x12 extract of suit property also will not be useful to wipe out of the said admission. In the result, there is no propriety in allowing application.

8. In the appeal under Section 100 of CPC, this Court unless a substantial question of law is made out or it is shown that the findings of facts recorded by Courts are contrary to the evidence on record or in ignorance of relevant material. In the instant case appellant was unable to made out case on both Courts. In the result, appeal stands dismissed with costs.

(R. M. JOSHI, J.)

ssp