

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 260 OF 1992

Mahendrakumar S/o. Ramkuwar Gupta
Age – 38 years, Occ : Business,
R/o Swami Dayanand Road,
Sadarbazar, Jalna, Dist. Jalna.

... Appellant

Versus

1. Ramnivas Bansilal Lakhotiya
(Died) Through L.Rs.
- 1A. Smt. Tarabai Ramnivas Lakhotiya
Age- 58 years, Occ : Household,
R/o Kapad Bazar, Sadar Bazar,
Jalna.
- 1B. Hemendra Ramnivas Lakhotiya
Age-40 years, Occ : Business,
R/o Kapad Bazar, Sadar Bazar,
Jalna.
2. Rampyaribai W/o Bansilal Lakhotiya
Age- 67 years, Occ : Business & Household,
R/o Kapadbazar, Sadarbazar,
Tq. & Dist. Jalna.

... Respondents

...

Mr.M.K. Deshpande – Advocate for Appellant
Mr. P.R. Katneshwarkar - Advocate for respondents.

....

CORAM: GAURI GODSE, J.

RESERVED ON: 19th January 2023

PRONOUNCED ON: 6th April 2023

JUDGMENT:**BRIEF FACTS:**

1. This second appeal is preferred by the original defendant for challenging the judgment and decree dated 21st November 1991 passed by the IInd Additional District Judge, Jalna, in Regular Civil Appeal No.166 of 1985. By the said decree, the appeal preferred by the original plaintiffs is allowed, and the appellant is restrained by perpetual injunction from making any construction over the suit land shown in yellow colour in the Map at Exhibit-54. Regular Civil Suit No. 198 of 1983 filed by the respondents was dismissed by the learned IInd Joint Civil Judge, Junior Division, Jalna, by judgment and decree dated 9th September 1985. Hence, the plaintiffs had preferred the said regular civil appeal in the District Court.
2. The second appeal was admitted on 10th February 1993 on the following substantial questions of law:-

“A) Whether in view of the inclusion of the disputed area in CTS record of CTS No.155 belonging to the appellant and granting of permission for construction by the Municipal Council together with erecting tin wall on the boundary line of disputed area, the respondent’s suit for issue of perpetual injunction is maintainable ?

B) Whether the compromise deed Exhibit- 61 could have been rejected by the lower appellate court without there being a declaratory relief sought by the respondents? “

C) Whether the finding by the D.I.L.R. dated 1.11.1990 modifying the area of CTS No.155 belonging to the appellant during the pendency of appeal before the learned appellate court could form the basis of the finding given by the lower appellate court ?

CASE OF THE RESPONDENTS:

3. The respondents filed suit for an injunction on the ground that they are owners of the suit property. The suit property was described as an open space in the plaint as under: -

“3 feet in breadth East-West, and 65’ 9” in length North-South of House bearing Municipal No. 3509, i.e. western portion of C.T.S. No.155, sheet no.29, Chalta No.41/3 situated at Swami Dayanand Road, Sadar Bazar, Jalna, more described in yellow colour in the annexed map.”

4. The respondents pleaded that Municipal House No.3509 was owned and possessed by the deceased Bansilal Shivilal. Respondent no.1 was the son of the deceased Bansilal. Respondent no.2 was the widow of Bansilal and mother of

respondent no.1. It was the case of the respondents that during the lifetime of Bansilal, he had agreed to sell a portion of the open plot of Municipal House No.3509 to the appellant and on 7th December 1968 a registered sale deed was executed in favour of the appellant. Thus, it was contended that the appellant was the owner and possessor of an open plot bearing Municipal no.3509, as described below in the plaint:

“a) Length North South 62’ from Government drain (Nali)

b) Breadth from Road to the house of Mahendrakumar i.e. mother of defendant 19’ i.e. from the wall of Mahendrakumar to road East-West.

c) Breadth from southern side East-West 21’ from the wall of Mahendrakumar’s house to open space of the plaintiffs.”

5. Thus, it was the respondents’ case that the remaining open plot of Municipal House No. 3509 was owned and possessed by them. The map produced along with the plaint described the area owned and possessed by the appellant as shown in green colour and the disputed area, i.e. the suit land was in yellow. It was further the case of the respondents that the appellant had applied for permission for construction on land, which also included the open space belonging to the respondents. Hence the respondents

had objected to the same on the ground that the appellant, by taking undue advantage of the city survey record, was trying to encroach upon the respondents' area. Since the city survey record showed an incorrect area in survey no.155, the respondents had challenged the same. However, by taking undue advantage of the incorrect area shown in the survey record, the appellant was trying to claim the right to the area belonging to the respondents. At that particular time, certain terms regarding taking measurements were executed on 26th September 1981 and on 8th October 1981, respondent no. 1 visited the suit land to take the measurements. However, the appellant refused to take measurements. Thus, actual measurements as per the terms never took place.

6. It was contended that on 31st July 1968, the appellant, through his advocate, had issued notice to deceased Shivilal regarding the transaction of sale to be executed in favour of the appellant. Along with the said notice, a map was also forwarded. Thereafter a registered sale deed dated 7th December 1968 was executed, which clearly supported the respondents' case. However, the appellant took undue advantage of the incorrect area in the city survey record. The respondents had issued notice

and repudiated the terms recorded on 26th September 1981. On 14th April 1982, the objections raised by the respondents with respect to the city survey record were rejected by the Municipal Council, Jalna. Hence the respondents had filed a revision application before the Collector, and the Collector had passed an order that the permission given to the appellant for construction should be restricted as per the area described in the registered sale deed dated 7th December 1968 executed in favour of the appellant and not as per the city survey record. In spite of the said order, the appellant had started carrying out the construction over the suit land. Hence, the respondents were constrained to file the suit.

CASE OF THE APPELLANT:

7. The appellant appeared and filed written statement and claimed ownership over the suit land. The appellant stated that he had purchased a portion of House No. 3509 and not an open portion. It was the contention of the appellant that the description as stated in the sale deed provided that the point of measurement of 50 feet of House No.3510 had to start from the boundary of the Municipal drain towards the east and not from the basement of the respondents, as contended by the respondents in the plaint. It

was the case of the appellant that when he purchased the portion of House No.3509, the same was surrounded by House No.3510, and later on, House No.3510 and a portion of House No.3509 had fallen down, and it was open to the sky. The appellant admitted the respondents' ownership with respect to House No.3510 but contended that beyond 50 feet from the point of Municipal drain on the western side upto the House No.3508, the appellant was the owner and possessor. Thus, it was the contention of the appellant that he was the owner of the suit land and the description, as pleaded by the respondents, was incorrect.

8. The appellant contended that the city survey record of Sheet No.29, chalta no. 4183 and city survey no.155 were correct. Hence, on the basis of the city survey record, the appellant applied for construction permission. The city survey record of city survey no.155 was correct, and the appellant contended that the descriptions given by the respondents in the plaint were not as per the city survey record. The appellant admitted issuance of the notice dated 31st July 1968 but denied that the notice was issued along with any map concerning the sale transaction. It was further contended that measurements, as mentioned in the

notice, were approximate measurements and that as per the registered sale deed, the length and breadth of House, which is a portion of House No. 3509, has been specifically mentioned for the purpose of identifying the area sold to the appellant. Thus, it was the contention of the appellant that with an intention to grab the area already sold to the appellant false suit was filed by the respondents. By way of an additional written statement, the appellant pleaded about the details of the compromise terms signed by respondent no. 1 on 26th September 1981, permitting the appellant to carry out construction as per the measurements recorded in the signed terms. Thus, the contention was that once the compromise terms were signed, the respondents were estopped from disputing the area sold to the appellant.

PROCEEDINGS IN TRIAL COURT:

9. Trial Court framed the issue with respect to the lawful possession of the respondents on the suit land and held that the respondents failed to prove that they were in lawful possession of the suit land. The learned trial Judge held that there was difficulty in fixing starting point to measure the distance of 50 feet, which was to be excluded from ascertaining the breadth of the area sold to the defendant. The learned trial Judge recorded

that, admittedly, Dasa (wooden frame) of House No. 3510 was not in existence. On examination of the documentary and oral evidence on record, the learned trial Judge dis-believed the respondent's case that measurement was not done as per the terms of compromise at exhibit 61. The learned trial Judge also dis-believed the respondent's contention that the compromise at exhibit 61 was not binding on the respondent. The learned trial Judge held that the evidence on record showed that the compromise was executed after the measurement was carried out on the spot. The case of the respondents that the compromise was not binding as it was not signed by respondent no. 2 is not believed as respondent no. 2 failed to enter the witness box. Thus, it was held that in view of the notice dated 10th October 1981 issued by the respondents, it was necessary for them to seek a declaration that the compromise at exhibit 61 was not binding upon them. Thus, the trial Judge held that in the compromise at exhibit 61, it was admitted that the breadth of the area sold to the appellant was more than 19 feet and 21 feet as per the sale deed. The learned trial Judge relied upon the city survey record, which showed the suit land in the appellant's name. Though the respondents preferred an appeal to challenge

the city survey record, the same was pending. Thus, the learned trial Judge held that the respondent's contention that the portion of 3 feet 9 inch on north-south was a portion of the remaining area of House no. 3509 was not supported by any evidence. The trial Court thus dismissed the suit by holding that (i) the city survey record established that the suit land was owned and possessed by the appellant, (ii) even if the appeal challenged the city survey record of city survey no. 155 was allowed, the adjoining owner of city survey no. 156 (appellant's father) was not a party to the suit, (iii) length of the area of 62 feet north-south sold to the appellant was not disputed, (iv) Map at exhibit 54 relied upon by the respondent was not proved, (v) draftsman of the map was not examined by the respondent, (vi) appellants established that measurements were done at the spot as per compromise at exhibit 61, (vi) respondents were taking benefit of the fact that wooden frames of house nos. 3510, 3511 and 3512 did not exist, (vii) measurement report at exhibit 69 and evidence of PW2 (surveyor) did not support the respondents' case. Thus, on examining the oral and documentary evidence, the trial Court held that no case was made out to grant a decree

of injunction as prayed by the respondents and the suit of the respondents was dismissed.

PROCEEDINGS IN DISTRICT COURT:

10. Respondents had preferred the appeal before the District Court. The appeal was allowed decreeing the suit for injunction against the appellants. The first appellate Court examined the oral and documentary evidence and accepted the case of the respondents on the basis of the map, which was produced along with the plaint and exhibited as Exhibit-54. The first appellate Court held that the door frames, as referred to in the sale deed, were not in existence, and therefore, there was very little evidence relevant for the consideration. The first appellate Court thus relied upon the report of the maintenance surveyor (PW2) as well as his evidence in support of the same to hold that the door frame of House No.3154 and House No.3113 was in existence; however, the door frame of House No.3510 was not in existence. Thus, the first appellate Court, by examining the sale deed as well as the surveyor's report at Exhibit-65, held that even as per the sale deed, the area of 50 feet in width from the cement road from the eastern side was to be excluded and then there was a reference to the door frame of House Nos.3510 and 3514. Thus, the door

frame of House No.3510 was held to be abutting the cement road for the measurement of 50 feet portion as described in the sale deed.

11. The first appellate Court also relied upon the notice issued by the advocate for the appellant, which was produced at Exhibit-50 and Exhibit-51. It thus concluded that the appellant indicated the description of the property proposed to be sold to the appellant through his advocate notice. Thus, the description, as mentioned in Exhibit-50 and Exhibit-51, was consistent with the description in the sale deed as well as the pleadings of the respondents. Hence, the first appellate Court concluded that the notice at Exhibit-50 settles the disputes between parties as the same describes the area which was actually sold to the appellant. Thus, on the basis of the notice at Exhibit-50 and the attached Map at Exhibit-51, the first appellate Court accepted the description as pleaded by the respondents to specify the dimension of the exact area sold to the appellants.
12. First appellate Court further relied upon the record of the city survey, which was produced at Exhibit-28 and Exhibit-29 in the appeal. During the pendency of the appeal in the District Court, the D.I.L.R. passed the judgment on 1st November 1990 in an

appeal filed by the respondents. By the said judgment, D.I.L.R. held that the area of C.T.S. House No.159, i.e. House No.3510, was not 335.6 square meters. However, the same was 409.55 square meters, so corrections were ordered to be made to Akhiv Patrika. Thus, relying upon the documents of the city survey record produced at Exhibit-28 and Exhibit-29, the first appellate Court held that the strip of land in dispute, i.e. the suit property, was not sold to the appellant. The first appellate Court thus concluded that as per the city survey record, the portion of the suit land, i.e. the disputed open area, was shown to be a part of the property sold to the appellant and was shown as part of C.T.S. No.155 i.e. House No.3509. However, later on, as per the decision in appeal decided by D.I.L.R., there was a change in the record of the city survey and the disputed strip of land, i.e., suit property was shown in the property belonging to the respondents.

13. Thus, the first appellate Court, by relying upon the notice at Exhibit-50, the map attached to the said notice, which was produced at Exhibit-51 and the city survey record produced during the pendency of the appeal at Exhibit-28 and 29, concluded that the suit land belongs to the respondents and that

the same was not part of the area that was sold to the appellant. Thus, by holding that the appellant did not own the suit land, the first appellate Court allowed the appeal filed by the respondents and passed a decree of perpetual injunction restraining the appellants from making any construction over the portion shown in yellow colour in the Map at Exhibit-51.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

14. Learned counsel appearing for the appellant submitted that the appellant had applied for permission for construction before the Municipal Council, to which the respondents had filed an objection. The said objection filed by the respondents was decided by holding that the construction permission sought by the appellant could be granted in favour of the appellants on the basis of the description referred to in the sale deed. Thus, it was submitted that the Municipal Council, after considering the respondents' objections, had granted construction permission to the appellant. The first appellate Court failed to consider the important evidence concerning the grant of construction permission, passed after examining the title document of the appellant. Thus, the first appellate Court committed serious error by completely ignoring the said piece of evidence, which

supports the case of the appellant that the disputed strip of land, i.e. suit property, was, in fact, sold by deceased Shivilal (original owner) to the appellant. Thus, it was the contention of learned counsel for the appellant that the question of law thus framed at the time of admission of the appeal squarely covers the submissions made on behalf of the appellant with respect to the Municipal Council granting construction permission to the appellant to carry out construction on the suit land. Thus, the appellant being the owner of the suit property, there was no question of granting any perpetual injunction against the appellant.

15. With respect to the reliance placed on the compromise deed at Exhibit -61, it was the submission on behalf of the appellant that there was never any declaration claimed by the respondents with respect to the compromise deed. Once the respondents admitted the execution of the compromise deed, the same could not have been retracted by the respondents without seeking any declaratory relief with respect to the same. The respondents had failed to prove that they had validly repudiated the terms of the compromise deed. Hence, the respondents were not entitled to dispute the terms and conditions of the compromise deed, which

clearly showed that the suit land was, in fact, the part of the area that was sold to the appellant. Thus, learned counsel for the appellant submitted that the first appellate Court was in error by not relying upon the terms and conditions of the compromise deed. There was no issue framed with respect to the compromise deed being not binding upon the respondents. Hence, the findings recorded by the first appellate Court concerning the ownership of the suit property in favour of the respondents were completely contrary to the important evidence, which specifically identifies the area sold to the appellant.

16. Learned counsel for the appellant submitted that the area of C.T.S. No.155 belonging to the respondents was modified during the pendency of the first appeal. Hence the learned first appellate Court could not have relied upon the said modification of the area by the order passed by the D.I.L.R., as the same was during the pendency of the first appeal. Respondents had not made out any case on the basis of the said modification, which could support the cause of action pleaded by the respondents. Thus, learned counsel for the appellant submitted that it was obligatory for the respondents to prove the cause of action as pleaded when filing the suit to seek an injunction against the

appellant. The fact that the modification of the city survey record was only with respect to C.T.S. No. 159, which belongs to the respondents, the same could not have any basis to hold that the suit land was not part of the sold area to the appellants. As per the sale deed executed in favour of the appellants, the city survey record of House No.3509 was in the appellant's name and was numbered C.T.S. No.155. In the appeal filed by the respondents before the D.I.L.R, there was no change with respect to the area that was recorded in the name of the appellant for C.T.S. No.155. Hence, any modification of the area done only with respect to the C.T.S. No. 159 belonging to the respondents would not automatically modify the area of C.T.S. No. 155. Admittedly, the area of C.T.S. No.155 belonging to the appellant was never modified. Hence, any modification in the C.T.S. record belonging to the respondents could not be a basis to hold that the suit property did not form the part of the area sold to the appellant. Hence, it was submitted on behalf of the appellant that the judgment passed by the learned first appellate Court was not in consonance with the important piece of evidence that was on record, and the learned first appellate Court erroneously relied upon only the modification of the city

survey record with respect to the respondents' land. Hence, it was submitted on behalf of the appellant that all three questions of law framed at the time of admission of the second appeal support the appellants' case, and hence, the decree passed by the first appellate Court deserves to be quashed and set aside.

SUBMISSIONS MADE ON BEHALF OF THE
RESPONDENTS:

17. Learned counsel appearing for the respondents submitted that, admittedly, the eastern side of House No.3509 was sold to the appellants. Thus, as the sale deed in favour of the appellants as well as the city survey record showed that 11.52 square meters of House No.3509 belonged to the appellant and the property card of C.T.S. No.155 in the name of the appellant was only in respect of an area of 11.52 square meters, which did not include the suit land. The city survey record with respect to the respondents' land was recorded in C.T.S. No.159, which showed an area of 332.6 square meters. However, the same was corrected as per the document of title, and the area recorded with respect to the C.T.S. No.159 was corrected as 409.55 square meters. Thus, it was submitted that the increase of area in C.T.S. No.159 showed that the suit land was part of the property

belonging to the respondents and was not part of the property sold to the appellants. Learned counsel for the respondents relied upon the map, which was produced along with the plaint, which showed the specific dimension of the property sold to the appellants. Learned counsel submitted that properties bearing Municipal House Nos. 3510, 3511 and 3512 were admittedly owned by the respondents. The area sold to the appellant was on the eastern side of Municipal House No.3509. Municipal House No.3509 is opposite the three houses belonging to the respondents. There was no dispute that the eastern side of House No.3509 was sold to the appellant. Hence, the increase in the area of the respondents' land as per the order passed by the D.I.L.R. would obviously mean that the suit land, i.e. the disputed strip of land shown in yellow colour on the Map at Exhibit-54, was part and parcel of House No.3509, which was numbered as C.T.S. No.159. Thus, it was submitted on behalf of the respondents that perusal of the Map at Exhibit-54 coupled with the decision of the D.I.L.R., which was produced at Exhibit-28 and Exhibit-29, clearly shows that the area of the suit land belongs to the respondents. Learned counsel for the respondents thus submitted that the learned first appellate Court

has properly appreciated the evidence on record and rightly passed the decree of injunction, thereby restraining the appellants from carrying out any construction on the suit land which belongs to the respondents.

SUBMISSIONS IN REJOINDER ON BEHALF OF THE APPELLANT:

18. Learned counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of ***Balkrishna Dattatraya Galande Vs. Balkrishna Rambharose Gupta and another***¹ in support of the submission that the permanent injunction restraining a defendant from disturbing possession of the plaintiff can only be granted when the plaintiff proves his lawful and actual possession on the date of filing of the suit. Learned counsel for the appellants thus submitted that on the date of filing of the suit, the city survey record clearly showed that the suit land was not part of the area belonging to the respondents. Thus, the learned first appellate Court could not have passed a decree for injunction by relying upon the document, which was produced for the first time during the pendency of the first appeal. Thus, it was submitted that the cause of action, as pleaded by the respondents at the time of filing the suit for the

¹ (2020) 19 SCC 119

purpose of claiming injunction, was not supported by any documentary evidence. The respondents never made any efforts to amend pleadings for the purpose of relying upon the subsequent change in the C.T.S. record, which was for the first time produced at Exhibit-28 and Exhibit-29. Hence, the pleadings did not support the documents the learned first appellate Court relied upon to pass a decree of injunction. Hence, the learned first appellate Court was in grave error in passing a decree of injunction on the basis of the documents, which were for the first time produced in appeal proceedings. Hence, it was submitted that the decree passed by the learned first appellate Court deserves to be quashed and set aside.

CONSIDERATION OF SUBMISSIONS:

19. Suit is for simpliciter injunction based on title to the suit land. It is not disputed that part of Municipal House No.3509 was sold to the appellant by a registered sale deed. The dispute was whether the suit land was part of the area sold to the appellant. It was the case of the respondents that CTS No. 155, in the name of the appellant, showed an incorrect area. Hence, the same was challenged by the respondents. However, by taking advantage of

the incorrect area shown in CTS No. 155, he was trying to encroach upon the respondents' area.

20. The learned trial Judge, on examining the evidence on record, held that the city survey record established that the suit land was owned and possessed by the appellant. A perusal of the judgments of both Courts shows that the respondents challenged the city survey record. However, in the appeal before DILR, the area shown in the CTS No. 159 standing in the name of respondents was modified. Hence, it was the submission on behalf of the respondents that the area of CTS No. 159 in the name of the respondents, as corrected in the appellate proceedings, shows that the suit land is part and parcel of CTS No. 159 standing in the name of the respondents. It is important to note that though the area of CTS No. 159 in the name of the respondents was increased in the appellate proceedings, the area of CTS No. 155 standing in the name of the appellant was not modified. The respondents had filed the suit on the ground that by taking benefit of an incorrect area shown in CTS No. 155 standing in the name of the appellant, he was trying to encroach upon the suit land, which was part and parcel of the area owned by the respondents. The learned trial Judge disbelieved the

respondents' case by relying upon the CTS record and the other evidence on record. The learned Trial Judge rightly disbelieved the map at Exhibit 54 as the draftsman of the map was not examined by the respondents to prove the same. The learned first appellate Court, relying upon the decision in appeal decided by D.I.L.R., held that there was a change in the record of the city survey and the disputed strip of land, i.e. suit land was shown in the property belonging to the respondents. In my view, this finding of the first appellate Court is erroneous because there is no modification of the area of CTS No. 155 standing in the appellant's name. The respondents had sought an injunction on the ground that the appellant was taking benefit of an incorrect area shown in CTS No. 155 standing in his name. Nothing is produced on record to show any change in the area of CTS No. 155. Thus, there is no merit in the submissions made on behalf of respondents that change in the area of CTS No. 159 would mean that the area of CTS No. 155 was incorrect.

21. It is not disputed that construction permission was granted to the appellant. Given the respondent's objection, the learned Collector had ordered that construction permission be granted to the appellant as per the title document. There is neither any

challenge to the sale deed in favour of the appellant nor any declaration sought regarding ownership of the respondents over the suit land. There is no modification in the area of CTS No. 155 standing in the appellant's name. Thus, the first and third questions of the law framed must be answered in favour of the appellant. In view of the undisputed sale deed in favour of the appellant and the CTS No.155 standing in the name of the appellant supported by the construction permission granted in favour of the appellant, it cannot be said that the suit land is part of the area owned by the respondents. Thus, the learned Advocate for the appellant is right in submitting that the learned first appellate Court ought not to have relied upon the city survey record produced for the first time in the Appeal, without any supporting pleadings.

22. So far as the second question of law on the compromise deed at exhibit 61 is concerned, the learned trial Judge, on appreciation of the evidence on record, has recorded a finding that measurement was done as per the said compromise allowing the appellant to construct as per the said measurements and that the compromise is binding upon the respondents. The learned first appellate Court has not disturbed this finding. Nothing was

shown to me as to why the compromise at exhibit 61 will not be binding upon the respondents. There is nothing shown to me as to how there was repudiation on the part of respondents and acceptance of repudiation by the appellants. The learned first appellate Court has not recorded any reasons for not relying on the said document at Exhibit 61.

CONCLUSIONS:

23. On appreciation of documentary and oral evidence, the learned trial Judge has rightly concluded that respondents have failed to prove that they legally possess the suit land. The learned first appellate Court has erroneously relied upon the appellate proceedings decided by the DILR. It cannot be said that a change in area in the city survey record of CTS No. 159 in the name of respondents would mean an automatic reduction of the area from the city survey record of CTS No. 155 in the name of the appellant. CTS No. 155 is recorded in the name of the appellant on the basis of a title document which is not under challenge. The respondents had prayed for an injunction regarding the suit land on the ground that the appellant was taking benefit of an incorrect area recorded in CTS No. 155 in the appellant's name. Nothing shows how the suit land could be

treated as part of CTS No. 159 owned by the respondents for claiming a decree of injunction. Without any clear proof of title and possession of the respondents over the suit land, they are not entitled to seek an injunction against the appellant, which would deprive the appellant of using the property owned and possessed by him under an undisputed title document and city survey record. The learned counsel for the appellant has rightly relied upon the decision of the Hon'ble Supreme Court in the case of *Balkrishna Galande* in support of his submission that in absence of any proof of title and possession on the date of the suit, the respondents are not entitled to seek any injunction in their favour.

24. For the reasons recorded above, the second appeal is allowed by passing the following order:

- i) the impugned judgment decree dated 21st November 1991 passed by the IInd Additional District Judge, Jalna, in Regular Civil Appeal No.166 of 1985 is quashed and set aside.
- ii) Judgment and decree dated 9th September 1985 passed by the learned IInd Joint Civil Judge, Junior Division, Jalna,

in Regular Civil Suit No. 198 of 1983 is confirmed, and
Regular Civil Suit No. 198 of 1983 is dismissed.

iii) There will be no order as to costs.

[GAURI GODSE, J.]