

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

SECOND APPEAL NO. 248 OF 2017
WITH CA/4239/2017 IN SA/248/2017

VILAS MAHADEO DHUMAL
VERSUS
HARIBHAU RAMBHAU RAUT AND ANOTHER

...
Advocate for Appellant : Ms. More Shubhangi D.

CORAM : R.M. JOSHI, J.
DATE : 06th April, 2023

PER COURT :

1. This appeal takes exception to the impugned order dated 17.10.2016, passed by learned Additional District Judge, Majalgaon, District Beed, in Regular Civil Appeal No. 67 of 2013 arising out of the impugned order dated 24.09.2012, passed by learned Civil Judge Junior Division, Wadwani, in Regular Civil Suit No. 44 of 2009, whereby, appeals filed by the plaintiff came to be dismissed.

2. Learned counsel for the appellant states that Trial Court as well as First Appellate Court have committed error in dismissing the suit filed by the plaintiff for seeking injunction against defendants. It is her contention that there is a registered sale deed executed by Nadekha Pathan in his favour against the consideration of Rs. 33,000/- Thus, according to her, the plaintiff has acquired title in the suit

property and since he is in possession, thereof, this is a fit case, wherein, the defendants can be restrained from interfering into his possession over suit house.

3. Perusal of judgments of Trial Court as well as First Appellate Court indicates that in respect of the same suit house RCS No. 373 of 1997, was filed by Nadekha Pathan against defendant no. 1, herein, seeking declaration that he has title and possession in respect of the said house. The said suit came to be dismissed on 03.12.1998 and First Appeal bearing no. 188 of 1998 against dismissal also came to be rejected. These orders were carried in Second Appeal No. 800 of 2005, before this Court. However, judgment and decrees of Courts below were confirmed by this Court.

4. There is no dispute about the fact that the findings are recorded in the said previous suit to the effect that the Nadekha Pathan has no title or possession in the suit property. Since the said judgment of the competent Court has attained finality with the finding that the vendor of the present plaintiff has no title or possession of the suit property, no title or possession of suit house is acquired by plaintiff herein. Hence, question of grant of injunction against the true owner does not arise.

5. For the purpose of maintaining the suit for injunction, it is a pre-requisite that the plaintiff proves his title and possession over the subject property of the suit. In this case, the execution of sale deed dated 22.12.2000, has not transferred title of the suit house in favour of plaintiff as the vendor of plaintiff himself lacked title. From the perusal of the judgment of the trial Court, it is clear that the plaintiff herein had knowledge about the pendency of previous suit being RCS No. 373 of 1997 and, therefore, even otherwise plaintiff cannot claim himself to be bonafide purchaser of the suit house.

6. In the aforesaid facts and circumstances, no perversity is found in the judgments of both Courts below. For want of involvement of any substantial question of law, appeal stands dismissed.

7. Pending Civil Application also stands disposed of.

[R.M. JOSHI, J.]