

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

**SECOND APPEAL NO.62 OF 2023
WITH CA/2187/2023 IN SA/62/2023**

1. Vijay s/o Soma Rathod
2. Mohan S/o Soma Rathod ...Appellants

Versus

Lobha s/o Amarsing Rathod (Died)
Through his legal heirs

1. Madhukar s/o Lobha Rathod
2. Mohan s/o Lobha Rathod
3. Sow Rukhmanbai w/o Amarsing Pawar
4. Sow. Shantabai w/o Bhiku Pawar
5. Sow. Sakhubai w/o Namdeo Chavan
6. Santosh s/o Mohan Pawar
7. Sanjay s/o Shivram Rathod
8. Gajanan s/o Bhimrao Pawar
9. Sharad s/o Bhimrao Pawar ...Respondents

...
Advocate for Appellants : Mr. S.V. Kurundkar h/f Mr. M.D. Narwadkar
Advocate for Respondent Nos.1 to 5 (Caveator) : Mr. Avinash D. Hande

...
CORAM : S.G. MEHARE, J.

DATED : AUGUST 25, 2023

ORDER :-

1. Heard learned counsel for the appellants and learned counsel for the contesting respondents.

2. Respondents nos. 1 and 2 had filed a suit for a permanent injunction against the present appellant and respondents nos. 6 to 9, who were the defendants in the suit. The suit lands in the suit were gut nos. 84 and 87 of village Mouje Bhorad (Palaiguda) Taluqa Mahur, District Nanded. The plaintiffs were the owner and possessor of the suit lands. The defendants were the owner and possessor of gut no.91 of village Bhorad (Palaiguda). The defendants had a defense that the plaintiff, in collusion with the Revenue Officer, muted his name in the revenue record of suit lands. The plaintiffs were the owners of Gut No. 87 only. The plaintiffs have sold 98 gunthas of land from Gut no. 84. However, they do not know where the remaining from that gut no. was gone. They are not residing in the village. Under the garb of ownership of gut no. 84, they are trying to enter their gut, no. 91.

3. Considering the evidence, the learned Civil Judge, Mahur, decreed the suit partly and dismissed the suit about Gut no. 84 and granted a permanent injunction about Gut no. 87, against the defendants. To show his possession and ownership, he relied on the 7/12 extract. The learned trial Court admitted that his name was recorded in the 7/12 extract of those fields. However, the learned trial Judge observed that field gut no.84 is not in existence. Hence, he issued an injunction against the present appellants not to disturb the peaceful possession of the plaintiff over gut no.87, measuring 30

R of land. The plaintiff had preferred the appeal. The learned Principal District Judge, Nanded, allowed the appeal and also issued the injunction for protecting the possession of gut no.84.

4. Learned counsel for the appellants would submit that since there was a cloud over the title of the respondent/plaintiff, the suit simpliciter injunction would not lie. Learned counsel for the appellants would further submit that the respondent/plaintiff was considering that gut no.91 is gut no.84. Hence, the injunctive orders are violating their rights to enjoy their property.

5. Per contra, the learned counsel for the respondents would submit that gut no.91 was never the suit land. The plaintiff never claimed ownership over it. There was documentary evidence proving that gut nos. 84 and 87 were standing in the name of the plaintiff in the 7/12 extract. In the absence of any concrete claim of the title over gut no.84, barely a defence that there was a cloud over the title of the plaintiff over the suit land is nothing but an attempt to prevent the plaintiff from enjoying his land. He would submit that appellants nos.1 and 2 had ill intention to grab the land gut no.84. Since there were no injunctive orders about gut no.91 owned by the present appellants, the impugned judgments and orders are in no way violating their rights.

6. Learned counsel for the appellants would argue that where the title of the plaintiff is under the cloud, without a

declaration of title, no injunction can be granted, is the substantial question of law to be formulated in this appeal. Hence, the appeal deserves to be admitted.

7. Perused both judgments and decrees. The present appellants claim they own gut no.91. Admittedly, gut no.91 was not the suit property. The plaintiff did not claim any right over gut no.91. The suits cannot be decided only on assumptions and presumptions. If the defendants have any right over the disputed land, they shall claim the title or interest in it. What the plaintiff was presuming is the crop of the brain of the defendants. The intellectual pleading that the title of the plaintiff is under the cloud suit simpliciter injunction cannot be entertained is nothing but an ill motive to restrain the person from protecting their legal rights. In the facts of the case, the Court is not satisfied that the substantial question of law is involved in this case.

8. For the above reasons, the appeal stands dismissed at the admission stage.

9. The Civil Application No.2187 of 2023 stands disposed of.

(S.G. MEHARE, J.)