

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

**SECOND APPEAL NO.131 OF 2011**

Jagannath Shaligram Chandak,  
Age: 52 years, Occu. Business,  
Proprietor of Jagan Provision,  
R/o. Ankur Apartment, Plot No.1,  
Samarth Nagar, Aurangabad.

**.. APPELLANT**  
[Orig. Plaintiff]

**VERSUS**

1] Sanjay Manmatappa Warkari,  
Since Deceased through his LR's

1A. Smt. Prema wd/o. Sanjay Warkari,  
Age: 53 years, Occu : Household,

1B. Priyanka d/o. Sanjay Warkari,  
Age : 30 years, Occu : Household.

1C. Rahul s/o. Sanjay Warkari,  
Age : 28 years, Occu : Education,  
All R/o. Behind Jagan Provision,  
Kumkbarwada, Aurangabad.

2] The Commissioner,  
Municipal Corporation,  
Aurangabad.

**.. RESPONDENTS**  
[Orig.Defendants]

...

Mr.C.K.Shinde, Advocate for the appellant

Mr.P.R.Katneshwarkar, Advocate for the respondent no.1.

Mrs.Manjusha Deshpande, Advocate for the respondent  
no.2.

...

**CORAM : ARUN R. PEDNEKER, J.**

**DATE : 06.07.2023**

**P.C. :**

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

2] This Court, by order dated 21.03.2011 admitted the present Second Appeal on the following substantial questions of law :

i) When it is established that the plaintiff/appellant is in settled possession, whether his possession can not be protected and injunction to the extent that he can not be dispossessed without due process of law, can not be granted?

3] The trial Court had dismissed the suit against defendant no.1 and decreed the suit against the defendant no.2 by order dated 15<sup>th</sup> July, 2006 passed by the III Joint Civil Judge Senior Division, Aurangabad in Regular Civil Suit No.891 of 2003. The trial Court passed the following order :

(1) The suit is partly decreed against defendant no.2 only.

- (2) Defendant no. 2 or anybody claiming through it, are hereby restrained from causing interference in the possession and enjoyment of the property M.H.NO. 4-5-29 CTS NO. 4491 to the extent of 8' X 7' bounded by East – 7' open space and Government land, West – House of defendant no.1, South – House of defendant no.1, and North – Government road, Kumbharwada, Aurangabad without following due process of law.

4] The learned Appellate Court i.e. the District Judge-3, Aurangabad, by order dated 14.12.2010 in Regular Civil Appeal No.197 of 2006 confirmed the order dated 15<sup>th</sup> July, 2006 passed by the III Joint Civil Judge Senior Division, Aurangabad.

5] The learned counsel for the respondent no.1 – defendant no.1 submits that the present Second Appeal be allowed in terms of the question of law framed by this Court.

6] In view of the same, the substantial questions of law framed in the present Second Appeal is answered in

favour of the appellant and the Second Appeal is allowed. It is thus directed that the appellant cannot be dispossessed by defendant nos.1 and 2 from the suit land without following the due process of law.

7] Second Appeal is allowed in terms of the substantial questions of law framed by this Court by order dated 15.07.2006.

8] Decree be drawn accordingly.

**[ARUN R. PEDNEKER]**  
**JUDGE**

DDC