

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**SECOND APPEAL NO. 283 OF 2017
WITH
CIVIL APPLICATION NO. 4673 OF 2017**

Laxmibai Anandrao Kamble,
Age 41 yrs, Occu. Labour,
R/o. Plot No. 3, Gut No. 56/2,
Rajnagar, Mukundwadi area,
Aurangabad, Dist. Aurangabad.

**....Appellant.
(Ori. Plaintiff)**

Versus

Shobhabai Sriram Kolte,
Age 53 yrs., Occu. Household,
R/o. CM-2/54, Thakare Nagar,
N-2, CIDCO, Aurangabad,
Dist. Aurangabad.

**....Respondents
(Ori. Defendant)**

Mr. N.S. Kadarale, Advocate for appellant.

Mr. Santosh S. Naik, Advocate for respondent.

CORAM	: ARUN R. PEDNEKER, J.
CLOSED ON	: 22/06/2023
DELIVERED ON	: 04/07/2023

ORDER :

1. By the present second appeal, the appellant is challenging the judgment and order passed by the learned District Judge-3, Aurangabad in Regular Civil Appeal No. 283/2014 dated 23.1.2017, dismissing the appeal filed by the appellant/plaintiff, challenging the judgment and order passed by the learned 7th Jt. Civil Judge, Junior Division, Aurangabad in R.C.S. No. 991/2013 dated 21.11.2014, dismissing the suit of the appellant/plaintiff filed for simplicitor injunction under section 37 of the Specific Relief Act.

2. The facts of the case in brief are that the appellant is the original plaintiff in R.C.S. No. 991/2013 filed in the Court of 7th Jt. Civil Judge, Junior Division, Aurangabad against the defendant, present respondent. It is the case of the plaintiff that she is the owner of the suit property i.e. plot No. 3 admeasuring about 20 x 32 fts. situated in Gat No. 56/2, Mukundwadi,

within the jurisdiction of Aurangabad Municipal Corporation. It is the case of the plaintiff that she had purchased the suit property on 23.10.2009 under the notarized document. It is the case of the plaintiff that she is in possession of the suit property and plaintiff has erected a hut and kept tins on the said hut since the date of purchase. It is the further case of the plaintiff that plaintiff has applied for electricity meter and it was accordingly granted and she has been paying the corporation taxes. It is the case of the plaintiff that the respondent had threatened the plaintiff to vacate the suit premises and therefore, she filed suit for injunction.

3. Defendant filed written statement and resisted the suit of the plaintiff. In the written statement defendant had pointed out that defendant had purchased the suit property under the registered sale deed from one Bhausahab Kashinath Shinde. It is further case of the defendant that the husband of the defendant was in Government service and they stayed at different place and when they visited Aurangabad to construct the house, they received the summons. It is the further case of the defendant that the defendant did not execute notarized document as alleged by the plaintiff. It is contended by the defendant that the documents produced by the plaintiff are false and fabricated and defendant prayed for dismissal of the suit.

4. Both the Courts below have concurrently held that the plaintiff is not in legal possession of the suit property, so also the plaintiff does not have possessory title over the suit property. In view of the same, the suit has been dismissed by the Trial Court and same has been upheld by the Appellate Court.

5. The learned counsel for the appellant submits that the plaintiff is in possession of the suit property and the possession is evidenced by the electricity bill and receipts of municipal taxes and that there is a notarized

document, by virtue of which plaintiff had purchased the property and put in possession of the suit property. Both the Courts below have not accepted the possession of the plaintiff over the suit property on the basis of notarized document as it is not proved by the plaintiff and that the notarized document wherein the photo of one lady is appearing as executant of the said document prima facie appears different one than the defendant. Thus, the appellate Court has held that plaintiff has no legal title over the suit property and therefore, injunction cannot be granted to the plaintiff.

6. In the instant case, since the suit is for simplicitor injunction and the defendant has claimed and prima-facie established her title over the suit property and the plaintiff has not amended the plaint to establish her title over the suit property, the courts below have rightly dismissed the suit of the plaintiff. The suit filed is for simplicitor injunction without declaration of ownership. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

7. In view of the discussion made above, I hold that no interference is warranted in the findings recorded by the of the Courts below. No substantial question of law arise for consideration in the present second appeal. Hence, the second appeal is dismissed. As second appeal is dismissed, nothing survives in the civil application and the same is also disposed of accordingly.

[ARUN R. PEDNEKER J.]