

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 297 OF 2013

Shri Murlidhar Uttam Patil & another

Appellants

Versus

Smt. Laxmibai Mansha Bhil

Respondent

Mr. M. S. Kulkarni, Advocate for the appellants.

Mr. P. R. Patil, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 10th APRIL, 2023.

PER COURT :

1. At the outset, learned counsel Mr. S. S. Agrawal seeks discharge in view of appearance of learned counsel Mr. P. R. Patil for the respondent. Learned counsel Mr. Agrawal is discharged.

2. Heard. Admit.

3. Following substantial question of law is framed :-

Whether the First Appellate Court and the Trial Court have committed error in not considering the plaint and admissions given by the plaintiff with regard to possession of defendants over a particular

portion of land and decreeing the suit for injunction by ignoring the evidence on record indicating possession of defendants over the suit land ?

4. Learned counsel Mr. P. R. Patil waives service of notice on behalf of the respondent.

(R. M. JOSHI)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5858 OF 2013 IN
SECOND APPEAL NO. 297 OF 2013

Shri Murlidhar Uttam Patil & another

Applicants

Versus

Smt. Laxmibai Mansha Bhil

Respondent

Mr. M. S. Kulkarni, Advocate for the applicants.

Mr. P. R. Patil, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 10th APRIL, 2023.

PER COURT :

1. By this application the applicants/original defendants are seeking stay to the operation and implementation of the impugned judgment and decree.

2. Learned counsel for applicants states that there are candid admissions of plaintiff to the effect that defendants are in possession of a particular portion of the suit land and hence the impugned judgment and decree deserves to be stayed.

3. Learned counsel for respondent/original plaintiff resists the application with submissions that both the Courts below have held that plaintiff is in possession of the entire suit land.

4. This Court, after taking into consideration material evidence on record, has framed substantial question of law as to whether both the Courts below have committed error in not considering the admission of plaintiff with regard to possession of defendants over a particular portion of suit land. Perusal of the notes of evidence filed on record indicates that plaintiff in no uncertain terms has accepted that three acres of land is cultivated by defendants for 4 to 6 years and that they have dug a well in the said area. Plaint shows that the land Gat No. 71/1 was in two parts and there is bandh in between. It is also specifically stated that northern and southern side parts can be identified separately. In the light of these pleadings, admission of plaintiff is sufficient to show atleast prima facie, that the defendants are in possession of a particular portion of suit land.

5. Since plaintiff has failed to establish her possession over the said portion of land, applicants/appellants are entitled for stay of

the impugned judgment and decree. Hence, civil application stands allowed in terms of prayer clause 'A'.

(R. M. JOSHI)
Judge

dyb