

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.758 OF 2012**

1. Murlidhar Baburao Dhakne (died)
Through it Legal heirs

1A. Chhabubai W/o Murlidhar Dhakne,
Age: 82 years, Occu.: Nil.

1B. Baban S/o Murlidhar Dhakne,
Age: 42 years, Occu.: Agril,

1C. Udhav S/o Murlidhar Dhakne,

All R/o. Bramhangaon, Tq. Paithan,
Dist. Aurangabad.

..Appellant
(Orig. Defendants)

Versus

Sugandabai W/o Deorao Dighole,
(Deceased) through L.Rs.-

1. Kadubai W/o Madhukar Bade,
Age: 54 years, Occu.: Agriculture,
R/o Kakat-Jagaon, Tq. Paithan,
Dist. Aurangabad.

2. Hausabai W/o Anna Sangale,
Age: 52 years, Occu.: Agriculture,
R/o Bhamberi, Tq. Paithan,
Dist. Aurangabad.

..Respondents
(Orig. Plaintiffs)

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Mr. D. A. Bide, Advocate for the Appellants.

Mr. S. S. Kazi, Advocate for the Respondent Nos.1 and 2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 03rd AUGUST, 2023.

PRONOUNCED ON : 18th AUGUST, 2023.

JUDGMENT:-

1. The appellants/original defendants impugn the judgment and decree dated 03.05.2011 passed by the learned District Judge-II,

Aurangabad in Regular Civil Appeal No.104/2010 thereby reversing judgment and decree dated 08.11.2006 passed by the Civil Judge, Junior Division, Paithan in Regular Civil Suit No.204/1997 by which suit filed by the respondents/plaintiffs seeking decree of perpetual injunction in respect of the land bearing Gut No.158 admeasuring 2H 2R situated at Brahmangaon, Tq. Paithan, Dist. Aurangabad was dismissed. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. It is contention of the plaintiffs that the original Survey No.64 has been divided into Gut Nos.158 and 157 during the consolidation scheme. The husband of the plaintiff is owner of the Gut No.158, whereas the defendant is owner of adjacent Gut No.157. It is further pleaded that some part of the land from bearing Gut No.157 has been sold by the one Vikram vide registered sale deed dated 25.04.1997 in favour of plaintiff and her grandson Ankush. They are in possession of the said land since the date of sale deed. Plaintiff contends that the defendant wanted to purchase land from Vikram however against his wish, Vikram transferred land to the plaintiff therefore defendant has grudge in his mind. He started obstruction in the peaceful possession and enjoyment of the property of the plaintiff from Gut No.158 admeasuring 2H 2R (5 acres). The contention of the plaintiff is that on 25.11.1997 while the plaintiff and her son-in-law were carrying agricultural operations in the suit field, the defendant obstructed them and apprehended. Taking that as a cause of action, the plaintiff filed suit seeking decree of perpetual injunction.

3. The defendant (appellant herein) filed his written statement contending that, because of mistake caused during the implementation of the consolidation scheme plaintiff is depicted as owner of the Gut

No.158,. He submits that some part of Gut No.158 is in his possession since long. However, taking disadvantage of the defective revenue entries, the plaintiff has filed present suit.

4. The Trial Court after hearing the parties, dismissed the suit merely on the observation that the entire record regarding the consolidation is not placed into service by either of the parties. Pertinently, the cross suit which was instituted by the appellant bearing RCS No.136/1997 against the respondent (present plaintiff) seeking decree of declaration and injunction is dismissed by common judgment dated 08.11.2006.

5. The respondent/plaintiff filed Regular Civil Appeal No.104/2010 before the learned District Judge-2, Aurangabad. The Appellate Court allowed the Appeal and passed decree of perpetual injunction in favour of the plaintiff, thereby restraining the defendant from obstructing peaceful possession of the plaintiff over the suit property.

6. Mr. Bide, learned Advocate appearing for the appellant would submit that the Trial Court had dismissed the suit recording findings that the plaintiff could not establish her possession over the suit property, so also any obstruction at the hands of the defendant. He submits that the Trial Court was of the opinion that in absence of the entire consolidation record, the possession cannot be established. Mr. Bide further submits that merely on the basis of the entries in the 7/12 extract without further corroboration, the Appellate Court could not have reversed the decree passed by the Trial Court. He would further submit that the Appellate Court has completely ignored the admissions given by the plaintiff's witnesses by which they have admitted the location of the lands of the plaintiff and defendants as per the map annexed with the written statement. He would further submit that the Trial Court on

overall evaluation of the evidence, has refused the discretionary relief to the plaintiff. The Appellate Court could not have replaced the findings of the Trial Court while reversing the decree.

7. Per contra Mr. Kazi, learned Advocate appearing for respondent nos.1 and 2 vehemently submits that the plaintiffs/respondents herein are exclusive owner of the land Gut No.158. The defendant has no right or concern with said land. Since the date of the consolidation the revenue record is consistent with the case of plaintiff and there is no challenge to the division of the gut numbers made during the consolidation. In absence of such challenge, argument of the defendant contrary to the documentary evidence cannot be accepted. He submits that the Trial Court failed to consider the impeccable revenue record coupled with oral evidence and rejected the claim of the plaintiff on technical reasons. He would submit that there was no reason for Trial Court to conclude that the plaintiff could not establish the possession over the suit property.

8. Having considered the submissions advanced by respective parties, it is apparent that there is no dispute about ownership of the plaintiff over the Gut No.158. No challenge is raised to the consolidation scheme by which the name of the plaintiff is recorded as owner in respect of the land from Gut No.158. The plaintiff stepped in witness box and recorded her own evidence so also evidence of two other witnesses, who have candidly supported her case of possession over the land bearing Gut No.158. The oral evidence is duly supported by the documentary evidence in the form of consistent revenue entries. In absence of any adverse material dislodging plaintiffs claim as regards to her ownership and possession over the suit land, there is no reason to un-suit plaintiff. The defendant couldn't bring any material to discredit

the contention of the plaintiff regarding ownership and possession. Except bare plea of the defendant that owing to mistake in the consolidation plaintiff is shown owner, nothing is placed on record to justify such contention. The Appellate Court recorded finding based on evidence. Conversely, Trial Court had unnecessarily given hollow plea of the defendant. Pertinently, the neither defendant step into the witness box nor has recorded any other reliable evidence. The adverse inference is deducible against him for not stepping into witness box. The mere plea in the written statement cannot be given weightage when the defendant failed to support it by his own evidence and other material. The plaintiff has proved her possession based on the documentary as well as oral evidence. In that view of the matter, no substantial question of law arises for consideration in the Second Appeal. The finding of fact recorded by the first Appellate Court is based on the evidence. No perversity is found in the approach of the Appellate Court. The Second Appeal sans the merit, hence, is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE