

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.62 OF 2018

Fakruzama S/o Sayed Maheboob

Appellant

Versus

Shaikh Mahemood s/o Shaikh Chand  
& others

Respondents

Mr. K. J. Suryawanshi, Advocate for the appellant.

Mr. V. P. Latange, Advocate for respondents.

**CORAM : R. M. JOSHI, J.**

**DATE : 31<sup>st</sup> MARCH, 2023.**

PER COURT :

1. Heard.

2. This appeal from order is filed against the order passed by the First Appellate Court on 7<sup>th</sup> October, 2017, in Regular Civil Appeal No. 104/2011 thereby remanding Regular Civil Suit No. 117/2003 to the Trial Court for fresh decision by setting aside the judgment passed by the Trial Court on 9<sup>th</sup> September, 2011.

3. Plaintiff/appellant herein claims to be the owner and in possession of the suit property bearing Survey No. 20/A

admeasuring 1 acre and 93 gunthas within the limits of Municipal Council, Beed, House No. 1305, Ward No. 2, admeasuring 57117 sq. ft. under the registered sale-deed dated 12<sup>th</sup> October, 1971 from Gaur Ahmed. He further claims to have developed the said property by dividing into plots and some of the plots were sold to different persons. Out of the said property, one open space admeasuring 60 x 55 ft. owned and possessed by the plaintiff is the suit property.

4. It is further alleged by the plaintiff that the defendants are not concerned with the suit property but they are illegally trying to disturb the possession of plaintiff over the same. With these averments, the suit was filed for perpetual injunction restraining the defendants from obstructing possession of plaintiff over the suit land.

5. Defendants appeared before the Trial Court and filed written statement denying the contention of plaintiff with specific pleading that the father of the defendants purchased the suit land from plaintiff and since then they are in possession thereof.

6. Learned Trial Court decreed the suit by passing judgment and decree dated 9<sup>th</sup> September, 2011. The said judgment

was carried before the First Appellate Court. The learned First Appellate Court by passing the impugned order has relegated the suit for possession by framing following issues :

1. Whether the suit property is properly and correctly described ?
2. Whether plaintiff proves title to the suit property ?
7. Learned counsel for the appellant states that the First Appellate Court has committed error in remanding the case for retrial by framing issues without considering the written statement of the defendants wherein they have not disputed the title of plaintiff over the suit land. He further contends that the defendants failed to appear before the Trial Court to led any evidence and therefore, it is not a fit case for remand of the suit.
8. Learned counsel for respondents/original defendants supported the impugned order.
9. The law is settled that for the purpose of seeking injunction against defendant, the plaintiff must prove his title and

possession over the suit property. Here in this case, perusal of written statement of defendants clearly shows that the title of plaintiff over the suit land is specifically disputed. Apart from this, the discussion in the impugned order passed by the First Appellate Court indicates that even on the basis of documents placed on record by the plaintiff, there was no clear or unimpeacheable evidence to hold title of the plaintiff over the suit land. In such circumstances, it was incumbent on the part of the Trial Court to frame the issue of title of the suit property. Since the said issue is not framed, it is immaterial whether defendants had appeared before the Trial Court and led any evidence or not.

10. From the perusal of the impugned order, it is clear that the learned First Appellate Court has rightly appreciated the pleadings of the parties and has recorded finding that the Trial Court ought to have framed the issue of title. In such circumstances, no fault can be found with the impugned order passed by the First Appellate Court relegating the suit for fresh decision to the Trial Court.

11. In view of above, there is no substance in the appeal.  
Appeal stands dismissed.

( R. M. JOSHI)  
Judge

dyb