

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

**SECOND APPEAL NO.307 OF 2023
WITH
CIVIL APPLICATION NO.7285 OF 2023**

- . Mokida s/o Kishanrao Wakale,
Age: 50 years, Occupation: Agriculturist,
R/o. Dahegaon, Taluka: Jintur,
District: Parbhani **.. APPELLANT**
(Original Plaintiff)

Versus

1. Sukhdev s/o Limbaji Wakale,
Age: 60 years, Occupation: Agriculturist,
R/o. Dahegaon, Taluka Jintur,
District: Parbhani
2. Taramati w/o Sukhdev Wakale,
Age: 57 years, Occupation: Agriculturist,
R/o. Dahegaon, Taluka: Jintur,
District: Parbhani
3. Santosh s/o Sukhdev Wakale,
Age: 37 years, Occupation: Agriculturist,
R/o. Dahegaon, Taluka: Jintur,
District: Parbhani **.. Respondents**
(Original Defendants)

...

Advocate for Appellant: Mr. Bhargav B. Kulkarni
Advocate for Respondent No.3: Mr. Ravindra V. Gore

...

CORAM:	ARUN R. PEDNEKER, J.
Date:	05th JULY, 2023

ORDER:

1. Heard.

2. By the present second appeal the appellant is challenging the appellate court judgment, whereby, the appellate court has held that a suit for simplicitor injunction is not maintainable in absence of a declaration of a title against the defendant who has set up a defense of title over the suit property.

3. The brief facts leading to filing of the second appeal can be summarized as under:-

A. It is the case of the plaintiff that he has entered into the agreement with defendant no.1 Sukhdev on 10.05.2007 for total consideration of Rs.40,000/- for the sale of the suit land. He paid Rs.5,000/- as earnest amount and, thereafter, continued to pay him total Rs.17,500/-. On the same day, defendant no.1 has handed over the possession of the suit property to him. The said agreement was executed on Rs.100/- stamp paper.

B. Thereafter, on various occasions the plaintiff approached defendant no.1 to execute the sale deed but defendant no.1 avoided to execute the sale deed. Later, it transpired that defendant no.1 had transferred the suit property in favour of his children, defendants no.2 and 3, and, thereafter, they started obstructing the possession of the plaintiff, and hence, the suit for perpetual injunction was filed against the defendants.

C. The prayer in the plaint was only as regards perpetual injunction and no claim of declaration or specific performance of the agreement to sell was made. The agreement to sell when parted with possession has to be compulsorily registered and stamped under the Bombay Stamp Act.

D. The trial court on consideration of the material held that the plaintiff is in possession of the suit property as on the date on the basis of agreement to sell, hence, decreed the suit and, thereby, restrained the defendants from interfering with the plaintiffs possession of the suit property by perpetual injunction.

E. The said judgment was challenged before the appellate court. It was contended before the appellate court that the possession is on the basis of agreement to sell. The agreement to sell is not a registered document and, thus, respondent cannot get protection under section 53-A of the Transfer of Property Act. The protection under Section 53-A of the Transfer of Property Act is available to those who have registered agreement in their favour. It was contended that the suit simplicitor for injunction is not

maintainable against the owner unless a suit for specific performance of the contract along with the relief for perpetual injunction is filed.

F. The appellate court on a principle of law held that there is no dispute about the ownership of the defendants of the suit property and that simplicitor suit for injunction would not lie against the owners, and, thus, dismissed the suit for injunction. The order passed by the appellate court is challenged before this court.

4. The undisputed facts of the present case are that the defendants are the owners of the suit land and that the plaintiff claims their rights under an agreement to sell dated 10.05.2007 and claims protection under Section 53-A of the Transfer of Property Act. The suit simplicitor for injunction without seeking specific performance of the agreement to sell would not be maintainable as

laid down by the Hon'ble Supreme Court in the case of Balram Singh Vs. Kelo Devi, 2022 DGLS(SC) 1218, wherein at paragraphs no.5 and 6, it has held as under:-

"5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the original plaintiff instituted a suit praying for a decree of permanent injunction only, which was claimed on the basis of the agreement to sell dated 23.03.1996. However, it is required to be noted that the agreement to sell dated 23.03.1996 was an unregistered document/agreement to sell on ten rupees stamp paper. Therefore, as such, such an unregistered document/agreement to sell shall not be admissible in evidence.

6. Having conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/ agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession

which was allowed by the learned trial Court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting."

5. The facts in the case of Balram Singh (*supra*), are identical to the present case and the law laid down is applicable to the facts of the present case. In view of the same, the suit simplicitor for injunction is not maintainable against the owner of the property without prayer for specific performance of agreement to sell.

6. In view of the same, no substantial question of law arises for consideration and the second appeal is dismissed. The pending civil application is also disposed of.

[ARUN R. PEDNEKER, J.]

marathe