

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

47 SECOND APPEAL NO. 503 OF 2022

1. Manoj Shankar Kurhade ...APPELLANTS

2. Smt. Nita W/o. Manoj Kurhade,

VERSUS

Sandip Zumbarlal Sanghavi, ...RESPONDENT

Mr. S. T. Shelke, Advocate for the appellant

Mr. L. B. Palod, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 12th SEPTEMBER, 2023

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1. Heard the parties.

2. The appeal is by original defendants challenging the concurrent judgment against them whereby suit is decreed with costs. The defendants are restrained by perpetual injunction from causing obstructions in the peaceful possession of the plaintiff over the suit land Plot No. 1167, adm. 151.50 sq. mts. out of Town Planning Scheme No. 1, Survey No. 68/2/1, out of City Survey No. 1370A/1, situated within the Municipal Limits

of Shrirampur, Dist. Ahmednagar.

3. The case, in short is that the plaintiff has purchased suit property and became absolute owner of the property. There was obstruction to peaceful possession by the defendants. It is the case of the defendants that there is already a dispute pending before this court. As there is already proceeding filed for partition between one Balwantsingh Bansal, Sayra Shaikh and Rajiya Shaikh and therefore, no injunction can be granted. The case was that in fact since Balwantsingh who happens to be father-in-law of defendant No.1 and father of defendant No.2 has sold the land to one Sayra and Rajiya and therefore there is no question of granting of any injunction. The learned trial Judge on taking the evidence adduced by the parties recorded that there were two plots owned by Shantabai Gundu. One of the plots was sold to one Satyadeo Kohali and other to Balwantsingh Bansal. In a suit filed earlier between the Balwantsingh Bansal and others, Balwantsingh himself admitted that his property was different than the property that was sold

to Satyadeo Kohali and others by Shantabai. The court held that the property of Balwantsingh was different property of the vendor of the plaintiff and thus, the said Balwantsingh had no any right over the property of the plaintiff and decreed the suit. The said decree was challenged by the present appellants-original defendants in the appeal bearing RCA NO. 10/2019 in the District Court at Shrirampur, Dist. Ahmednagar.

4. The learned appellate court on going through the record and submissions has confirmed the findings recorded by the learned trial judge and dismissed the appeal. The original defendants is now before this court challenging the said judgment.

5. It is the submission of the learned advocate for the appellants that evidence is not properly appreciated by both the courts below. The court ought to have called for record from the office of Municipal Council. Since it was not done, there is failure of justice and prayed for admitting the appeal.

6. Learned advocate for the respondent submits that case is based upon facts. Both the courts have recorded the findings and have decreed the suit. No substantial question of law is made out in the present appeal. There is no perversity regarding findings of fact or appreciation of the evidence is pointed out. He relies upon the judgment reported in AIR 2001 SC 2942 in the case of Mohan Lal Vs Nihal Singh.

7. Considering the submissions and the judgment this court finds that no question of law is involved in the appeal as finding is clearly based upon the evidence before the court which need not be disturbed in the appeal. Therefore, the appeal stands dismissed.

8. In view of dismissal of the appeal, pending civil application/s, if any, stand disposed off.

[KISHORE C. SANT, J.]