

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

19 SECOND APPEAL NO.21 OF 2015

SHANTABAI @ MISHRIBAI LATE GULABCHAND GOLECHA
DIED LRS RAMESH GULABCHAND GOLECHA AND ORS
VERSUS
UTTAMCHAND BHIKCHAND GOLECHA AND ANR

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Advocate for Appellants : Mr. Gore Ravindra Vitthal.

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CORAM : S. G. MEHARE, J.
DATE : 27.10.2023

PER COURT :-

1. Heard the learned counsel for the appellants.
2. The appellants had filed a suit for declaration and perpetual injunction. The respondents/defendants were the nephews, brothers, mother, wife and sister-in-law of the plaintiff.
3. The learned Trial Court observed that due to partition, the plaintiff was in possession of the suit property. However, he had no legal rights over the suit property, as it was not allotted to him in partition. Learned Trial Court also observed that it was made only for convenience and on the basis of it, plaintiff enjoying the possession over the suit property for a long period. However, dismissed the suit.

4. The plaintiff had preferred the first appeal. The First Appellate Court believing the possession of the plaintiff of the suit property, allowed the appeal partly and issued the injunction against the appellants restraining them from disturbing the possession of the plaintiff till he has been evicted or dispossessed by due process of law.

5. Learned counsel for the appellants would submit that the judgment and decree of the learned First Appellate Court is apparently illegal. The possession of the plaintiff was unauthorized, hence, he cannot seek the protection. The claim of the plaintiff of the ownership over the suit land was denied by the Trial Court and affirmed by the First Appellate Court. The trespassers are not entitled to seek the injunction against the true owner. In this case, the plaintiff had the case that he was the family member of Golecha and in partition, he had received the share. Hence, he was possessing the suit premises. Considering the pleadings, there were some grounds to believe that the plaintiff was possessing the suit premises authorizedly and to the knowledge of the other family members. Therefore, the contention of the appellants in the facts and circumstances of the case that no injunction can be granted in favour of the trespasser against the true owner cannot be accepted.

6. Having regard to the arguments advanced by the learned counsel for the appellants and going through the impugned judgments and decrees, the Court is of the view that there is no substantial questions of law involved in this case.

7. Hence, the second appeal stands dismissed at admission stage.

(S. G. MEHARE, J.)

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