

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

SECOND APPEAL NO. 550 OF 2022
WITH
CIVIL APPLICATION NO. 11505 OF 2022

Anant s/o. Kishanrao Patil (Tathode)
Age 46 years, Occ. Labour,
R/o. Chand Nagar,
Ambajogai Road, Latur,
Tq. and Dist. Latur.

... APPELLANT

VERSUS

1] Sheelabai w/o. Baswant Kadwade,
Age 53 years, Occ. Household
R/o. Pachamma Gali, Latur,
Tq. And Dist, Latur
At present R/o. Opposite to the
Central Octroi Cremation Grounds,
CIDCO, N-6, Aurangabad,
Tq. And Dist. Aurangabad

.. (ori. Plaintiff)

2] Hidayatbee w/o. Chandsaheb Shaikh
Age 75 years, Occ. Household,
R/o. Kale Galli, Latur,
Tq. And Dist. Latur.

(Ori. Deft. No.1)

3] Prabhawati w/o. Ashok Deshmukh,
Age major, Occ. Household,
R/o. Ambejogai Road, Latur,
Tq. And Dist. Latur,

(Ori. Deft. No.3)

4] Shivaji s/o. Deo Kulkarni,
Age major, Occ. Household,
R/o. Chand Nagar, Latur,
Tq. And Dist. Latur.

(Ori. Deft. No.4)

Mr. A.R. Rathod, Advocate for appellant

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 6TH JULY, 2023
PRONOUNCED ON : 17TH JULY, 2023.**

JUDGMENT :-

The appellant / original Defendant no 2 preferred this appeal u/s 100 of CPC aggrieved by the judgment and decree dated 30.4.2022 passed by the District Judge, 3 Latur in Regular Civil Appeal No. 119 of 2019, thereby confirming the judgment and decree dated 14.6.2019 passed by the 6th Jt. Civil Judge J.D. Latur in R.C.S. No. 372 of 2007, by which the suit of the respondent (original plaintiff) seeking a decree of possession has been decreed.

2. The respondent/plaintiff had instituted R.C.S. No. 372 of 2007 before 6th Joint civil Judge J.D., Latur claiming that she has purchased the suit property i.e. plot No. 81 admeasuring 40 x 40 out of land survey No. 267-A situated at Latur under a registered sale deed from defendant No.1. i.e. Hadayatbee. Since the defendants were obstructing her possession, she had instituted R.C.S. No. 382 of 2003 seeking decree of declaration and injunction against the defendants. The suit was decreed and declaration of ownership was granted in her favour. According to the plaintiff, she is residing at Aurangabad alongwith her husband. Taking disadvantage of the situation, the defendant Nos. 1 to 4 prepared false document and dispossessed plaintiffs on 20th May, 2007. The plaintiff filed police complaint and also requested the defendants to hand over possession. However, they refused to accede her request. Hence, she approached the Court seeking a decree of possession.

3. The suit was contested by the present appellant/original defendant No.2 by filing written statement. He pleaded that, he has no concern with the plaintiff or the suit property. However, his wife has

purchased Plot No. 99 out of the Survey No. 267-A admeasuring 40 x 20 ft. from one Vijaykumar Kapse and others on 23.6.1996 and since the date of sale deed, she is in possession. The defendant No.2 raised contention that his wife is not made party to the suit hence suit is bad for non-joinder of necessary party. The learned trial court had framed the issues and recorded affirmative findings regarding the ownership and illegal dispossession of the plaintiff so also passed the decree, for delivery of possession to the plaintiff. The defendants filed appeal R.C.A. No. 119 of 2019 before the District Judge at Latur challenging the judgment and decree passed by the trial court. However, the appellate court dismissed the appeal vide judgment and order dated 30.4.2022.

4. Mr. Abhay Rathod, learned counsel appearing for the appellant would submit that both the courts below have committed serious error while ignoring the specific objection raised on behalf of the appellant/defendant No.2 that his wife owns plot admeasuring 40 x 20' which is part of suit property on the basis of a registered sale deed. However, she was not added as a party defendant to the suit. Hence suit is bad for nonjoinder of necessary party.

5. It is difficult to accede with such contention. Pertinently, Appellant/defendant No.2 never made any application before the trial court seeking direction to add his wife as party to the proceeding. Such objection was never pressed into service before the First Appellate Court. No application filed by defendant's wife on her volition seeking to implead her as party in suit. There is no material on record to indicate that defendant's wife was necessary party in suit. Therefore, apparently, such objection though raised in written statement, was not taken to its logical end. Even otherwise, there is no record to demonstrate that the wife of the defendant No.2 had any right in the suit property. In that view of the matter, the objection raised on behalf of the appellant cannot

be entertained in this second appeal.

7. Perusal of the judgment of the courts below would show that the issues were framed on the basis of the pleadings. Previously RCS No 382/2003 filed by respondent against defendant No.1 for declaration of ownership and perpetual injunction in respect of suit plot has been decreed and attained finality. Plaintiff has proved her title in respect of the suit property on the basis of the registered sale deed. Even the appellant/defendant No.2 categorically admitted that he does not have any concern with the same. The courts below have concurrently held that plaintiff has been illegally dispossessed of the property.

8. It is trite that a second appeal can be entertained only on the substantial question of law to be framed under Section 100 of the C.P.C. Interference in the findings of fact can only be made if those are perverse or based on no material or appreciation of evidence fact finding courts suffers from material irregularity.

9. On examination of the findings recorded by the courts below in the light of the aforesaid parameters of jurisdiction under Section 100 of C.P.C. no case is made out. Rather, there is no substantial question of law that arises for consideration in the facts of the case. Resultantly, the second appeal fails and dismissed with costs. Civil application also stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-