

SGA

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

**SECOND APPEAL NO.193 OF 2021
WITH
CIVIL APPLICATION NO. 4618 OF 2021
IN
SECOND APPEAL NO. 193 OF 2021**

Mangalbai Subhash Palve

... Appellant

Versus

Pandurang Vithoba Karad
and others

... Respondents

Mr. N.S. Jaju - Advocate for appellant

Mr. C.K. Shinde – Advocate for respondent nos.1 to 3.

CORAM : GAURI GODSE, J.

DATE : 13th February, 2023

PER COURT :

Second Appeal No.193 of 2021:

1. Heard. Second Appeal is admitted on the following substantial questions of law :

(i) Whether the First Appellate Court was right in reversing the findings recorded by the Trial Court with respect to the ownership of Kamalbai on the basis of the

revenue entries produced on record by the plaintiff and the supporting oral evidence with respect to the same ?

(ii) Whether, the First Appellate Court is right in reversing the findings recorded by the Trial Court in absence of any oral evidence led by the respondents ?

(iii) Whether the parameters as laid down by the Hon'ble Supreme Court in the decision of *Santosh Hajari Vs. Purshottam Tiwari reported in AIR 2001 SC 965* is followed by the First Appellate Court while reversing the findings recorded by the trial Court in favour of the appellant with respect to the ownership rights as well as possession of Kamalbai and the sale deed executed by Kamalbai in favour of the appellant ?

2. Mr.C.K. Shinde, learned counsel appearing on behalf of respondent nos.1, 2 and 3 waive service.
3. Record and Proceedings are already received.
4. Printing is dispensed with.
5. The appellant to file private paper book containing judgments of both the courts, first appeal memo, pleadings, notes of evidence and exhibited documents, within a period of one year from today.

Civil Application No.4618 of 2021:

6. By this application, there is prayer made for injunction restraining the respondents from disturbing the possession of the appellant over the suit property. There was a decree passed for declaration of ownership of the appellant as well as an order of injunction by the Trial Court on 13th October, 2008. There is nothing produced on record to show that decree was stayed during the pendency of the First Appeal. The First Appellate Court has reversed the decree of injunction passed by the Trial Court on 28th January, 2020. There is specific findings recorded by the Trial Court with respect to the possession of the present appellant on the basis of the sale deed executed by deceased Kamalbai. In the Trial Court there is no oral evidence led by the respondents with respect to they being possession of the suit property. None of the respondents have entered into witness box to prove their case with respect to the possession.

7. There is an affidavit in reply filed to the civil application, which deals with the documents, which are produced on record and dealt with by the Trial Court as well as Appellate Court. There is no any independent document and/or case made out with respect to the respondents being in possession of the suit property. On the basis of the findings that are recorded by the Trial Court, prima facie, I am of the view that the findings recorded by the Trial Court with respect to the possession of the appellant on the suit property on the basis of the registered sale deed executed by Kamalbai and revenue entries produced by the appellant in the name of Kamalbai as well as

supporting oral evidence of the appellant, shows that prima facie case is made out by the appellant to grant of injunction as prayed in the application. Hence, during the pendency of Second Appeal, there will be interim relief in terms of prayer clause “C”, which reads thus :

“C. Pending Hearing and final disposal of the present Second Appeal the respondents and their relatives servants, agents or anybody claiming through them may kindly be restrained from causing interference into peaceful possession of the applicant over the suit property.”

8. Applicants will not create any third party interest in the suit property.
9. Civil Application is allowed in above terms.

[GAURI GODSE]
JUDGE