

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

SECOND APPEAL NO. 230 OF 2022

Chhaya w/o Subhashrao Sonwane

Appellant

Versus

Bapurao s/o Ambadas Sonwane & another

Respondents

Mr. J. S. Aute, Advocate for the appellant.

Mr. M. P. Tripathi, Advocate for the respondents.

**CORAM : R. M. JOSHI, J.**

**DATE : 10<sup>th</sup> APRIL, 2023.**

PER COURT :

1. This appeal is filed by original defendant No. 1 against the judgment and decree passed in Regular Civil Appeal No 15/2015 confirming the judgment and decree passed in Regular Civil Suit No. 123/2012 wherein the defendant No. 1 was directed to handover vacant possession of disputed one room to the plaintiff and further restraining her from interfering into the possession of plaintiff over the suit house. Parties are referred by their nomenclature in the suit.

2. Plaintiff is the father-in-law of defendant No. 1 and father of defendant No 2. He claims that he was in service as a teacher in

Zilla Parishad school and retired on 31<sup>st</sup> January, 2008. He claimed to have purchased the suit house in the year 2008 from his own income. It is alleged that in the year 2011, defendant No. 1 forcibly entered into one room of the suit house on 7<sup>th</sup> June, 2011 and therefore, present suit came to be filed for seeking recovery of possession of the said room and injunction against defendant No. 1.

3. Defendant No. 1 resisted the suit by filing written statement wherein relationship between the parties is admitted. She further claimed that her husband i.e. defendant No. 2 was employed and even prior to his employment, he was cultivating the agricultural land along with plaintiff and derived income therefrom. It is her case that the suit house is being purchased from the income of her husband as well. It is also stated that the suit house is a joint family property of plaintiff and defendant No. 2 and that it is the responsibility of defendant No. 2 to provide shelter and maintain her.

4. Learned counsel for defendant No. 1 states that both the Courts below have committed error in appreciating evidence on record and holding that the suit house is a self acquired property of plaintiff. It is stated that there is matrimonial dispute going on

between defendant No. 1 and defendant No. 2 and that her right to stay in the suit house cannot be refused by the plaintiff. On these amongst other submissions interference is sought in impugned judgment and decree.

5. Learned counsel for the plaintiff supported the impugned judgment and decree by stating that considering the admission of defendant No. 1 in her cross examination, it has been rightly held that the suit house is the self acquired property of plaintiff and that this defendant has forcibly entered one of the rooms on 7<sup>th</sup> June, 2011. Thus she is justly directed to be removed therefrom with issuance of further injunction.

6. The initial burden was on plaintiff to show that he has purchased the suit house from his own income. Defendant No. 2 in his written statement has not disputed the said fact however, considering the denial of the same by defendant No. 1, it is incumbent on the part of plaintiff to substantiate his claim. There is no dispute about the fact that plaintiff was employed as a teacher in Zilla Parishad school and he retired on 31<sup>st</sup> January, 2008. Thus, availability of funds with plaintiff for purchase of suit house is not in

dispute. As against this, though defendant No. 1 has claimed that her husband was employed and also working in agricultural land before getting job and has contributed to the purchase of suit house, in her cross examination she candidly admits that her husband got employment in the year 2010. Further she was unable to bring any evidence on record to show that defendant No. 2 was doing agricultural work and has contributed to the purchase of the suit house. The evidence on record therefore shows that suit house is self acquired property of plaintiff and that defendant No. 1 has made no contribution in purchase thereof.

7. It is sought to be claimed that land bearing Gat No. 580 is an ancestral property. However, defendant No. 1 accepts that she is not aware as to when the said land was purchased. She further accepts that the land as well as the suit house stands in the name of her father-in-law i.e. plaintiff. Thus, from evidence of defendant No. 1 and evidence led by plaintiff, it can safely be said that plaintiff is the exclusive owner of the suit house.

8. It is also claimed by defendant No. 1 that being daughter-in-law of plaintiff and the suit house being her matrimonial home,

she has a right to reside therein. However, she has accepted in cross examination that since the year 2000, she is residing at her parental home. Admittedly, the suit house was purchased in the year 2008. Thus, the question of the suit house being matrimonial home of defendant No. 1 and defendant No.2 does not arise. Furthermore, in her cross examination, defendant No. 1 admits to have entered in one of the rooms in the suit house on 7<sup>th</sup> June, 2011. Though she contends that it was not unauthorised entry, however, there is no explanation provided as to why she entered the said house when admittedly she was staying in her parental home since the year 2000. In such circumstances, only inference from evidence on record can be drawn is that she forcibly entered one room of the suit house on 7<sup>th</sup> June, 2011 and case to that effect made out by plaintiff deserves to be accepted.

9. Perusal of evidence on record shows that plaintiff was successful in proving that the suit house is his self acquired property and that defendant No. 1 was not residing there as her matrimonial home. Learned Trial Court as well as First Appellate Court have rightly taken into consideration pleadings and evidence on record. This Court finds no perversity in the findings recorded by both the

Courts below. In absence of any involvement of substantial question of law, this appeal deserves to be dismissed. Hence appeal stands dismissed.

10. Pending civil application, if any, does not survive and stands disposed of.

**( R. M. JOSHI )**  
**Judge**

dyb