

SGA

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

SECOND APPEAL NO. 8 OF 2023  
WITH  
CIVIL APPLICATION NO.585 OF 2023  
IN  
SECOND APPEAL NO. 8 OF 2023

Dilip Nago Patil

.. Appellant

Versus

Smt. Umedbai @ Padamkuvar  
Bhimsing Raul  
Deceased through L.Rs.  
Himmatsingh Bhimsingh Raul  
and others.

... Respondents

Mr.R.S. Wani – Advocate for Appellant

....  
**CORAM : GAURI GODSE, J.**  
**DATE : 18<sup>th</sup> January, 2023**

**PER COURT :**

1. This second appeal is filed by the original defendant challenging the judgment and decree dated 23<sup>rd</sup> August, 2022 passed by learned Principal District Judge, Nandurbar in Regular Civil Appeal No.14 of 2017 as well as judgment and decree dated 29<sup>th</sup> April, 2017 passed by 4<sup>th</sup> Joint Civil Judge, Junior Division, Nandurbar in Regular Civil Suit No.184 of 2012 by which the suit of the plaintiffs is decreed for injunction by passing the following order :-

“ORDER

1. The suit is decreed with costs.
2. The defendant, his agents, servants, relatives or any person on his behalf are hereby permanently restrained from causing obstruction or interference to the peaceful possession of the plaintiffs over the suit property without due process of law.
3. Decree be drawn up accordingly.

(Pronounced in open court)”

2. The first appellate court has confirmed the decree of injunction passed by the trial court.
3. It is not disputed that the respondents-plaintiffs are owners of the suit property. What is sought to be contended on behalf of the appellant is that the plaintiffs had executed an agreement for sale in favour of one Asaram Dagadu Patil and pursuant to the agreement for sale, Asaram Dagadu Patil is in possession of the suit land. It is submitted on behalf of the appellant that wife of the appellant is daughter of this Asaram Dagadu Patil, and hence pursuant to the agreement of sale, Asaram was in possession and after death of Asaram, the heirs and legal representatives of Asaram are in possession of the suit property. Hence, it is submitted that the plaintiffs are not in possession of the suit land

and since the plaintiffs have failed to prove that the plaintiffs are in possession of the suit property, there could not have been any injunction passed against the present appellant and in favour of the plaintiffs.

4. It is further submitted that there was an application made during the pendency of the appeal at Exhibit-26 under Order XXXIX Rule 11 of the Code of Civil Procedure, thereby making an allegation that there was breach of the order of injunction passed by the trial Court. Copy of order dated 23<sup>rd</sup> August, 2022 passed by the District Court below Exhibit-26 in Regular Civil Appeal No.14 of 2020 is annexed to the civil application and is relied upon by the appellant. On the basis of the findings recorded in paragraph no.8 of the said order, it is submitted that the appeal court had already come to the conclusion that as per the revenue entries, the name of the wife of the appellant was in cultivation column of the suit field after conducting enquiry and hence the wife of the appellant had instituted the revenue proceedings on the strength of the agreement of sale dated 25<sup>th</sup> August, 1983 and hence the restraining order operating against the present appellant would not be an obstacle in the way of his wife. Thus, it was submitted that the appellate court had already come to the

conclusion in the said order that wife of the present appellant is in possession of the suit field, and therefore, there could not have been any injunction passed in favour of the plaintiffs by holding that they are in possession of the suit field.

5. It is further sought to be argued that evidence of plaintiff no.2 showed that plaintiff no.2 was not cultivating the suit field. It is submitted that the case of the plaintiffs was that plaintiff no.2 was cultivating the suit field, however, plaintiff no.2 have admitted that he is not cultivating the suit field. Plaintiff no.1 was not examined in support of the contention that plaintiff no.1 was cultivating the suit field. Further the observation and finding of the first appellate court was relied upon wherein the revenue entries are referred to. It is thus submitted that only on the basis of the revenue entries, the injunction which is passed in favour of the plaintiffs can not be sustained as there is no specific findings recorded that the plaintiffs are in possession of the suit field. It is further submitted that on the basis of the injunction which is passed against the appellant, the possession of his wife and other relatives are sought to be disturbed, and hence the order of injunction is sought to be misused. It is thus submitted that the present suit is an attempt of malicious proceedings to disturb the

possession of the heirs and legal representatives of Asaram in whose favour, there is agreement for sale. Thus, it is submitted that the second appeal would require consideration on the point that there could not have been any decree of injunction when there is no specific finding that plaintiffs are in possession of the suit field.

6. I am shown the copy of the application made by the wife of the present appellant for impleading herself as party defendant in suit. The said application was rejected and the same was confirmed by this Court by order dated 7<sup>th</sup> April, 2016 in Writ Petition No.2706 of 2016. Perusal of the said order shows that this Court specifically observed that it was open for the petitioners therein i.e. wife of the present appellant and heirs of Asaram to make an application before the trial court for deciding the present suit and suit filed by the heirs and legal representatives of Asaram together. Heirs and legal representatives of Asaram have filed the suit for specific performance of agreement, which was executed in favour of Asaram by the plaintiffs. There is nothing shown to me that any such attempt was made on behalf of either appellant or the heirs and legal representatives of Asaram.
7. In such circumstances, the present suit proceeded independently

and findings of fact are recorded that plaintiffs are in possession of the suit field. The revenue entries show that the names of the plaintiffs appear in the cultivation column in respect of the suit field. The appellant is not claiming to be in possession of the suit field, however, it is contended that his wife is in possession of the suit field pursuant to the agreement executed in favour of the father i.e. Asaram. It is further case that he was working in the suit land and defendant obstructed and threatened to dispossess him. Hence, the suit field was cultivated by him initially on behalf of Asaram and later, on behalf of heirs and legal representatives of Asaram. Hence, the submissions of appellant is that the appellant is not claiming to be in possession of the suit field. The appeal court has also considered the admission given by the present appellant that the plaintiffs are in possession of the suit property. With respect to these observations, it was argued on behalf of the appellant that in fact in cross examination what was admitted was that, the entry in revenue record was in respect of cultivation column in the names of plaintiffs and that there was no such admission that the plaintiffs are in possession of the suit field. I have perused the cross examination of the present appellant. The appellant has admitted that the revenue entries

show that in cultivation column names of the plaintiffs are recorded.

8. I have perused both the judgments. I do not find that the appellant has made any attempt to claim possession over the suit property and that only submission made is with respect to the plaintiffs not being in possession of the suit property. Trial court as well as first appellate court has framed issue with respect to the point of possession as per the agreement in favour of Asaram as well as the possession of the appellant in capacity of servant of Asaram. There is nothing brought on record to show that pursuant to the agreement that is claimed to have been executed in favour of Asaram, Asaram was anytime put in possession of the suit field. It is not the case of the appellant that the agreement in favour of Asaram was exhibited as a document to be considered in evidence. There is no attempt made to examine the persons who are claiming to be in possession on the basis of the agreement. It is not in dispute that the suit for specific performance of agreement in favour of Asaram is still pending and in fact the same is stayed under section 10 of the Code of Civil Procedure. There is nothing on record to show that any attempt was made to decide both the suits together. The very fact that suit for specific

performance on the basis of agreement was filed subsequent to the filing of the present suit, the same cannot be taken into consideration for deciding the present suit, which was heard and decided on the basis of admitted title of the plaintiffs and the revenue record, which shows that the plaintiffs' names are undisputedly entered into the revenue record as in possession of the suit property. Even otherwise, the present appellant – defendant is not claiming to be in possession of the suit field. All these entries are considered by both the courts and a guarded decree of injunction is passed which is reproduced hereinabove. In this view of the matter, I do not see any substantial question of law involved in the second appeal. Hence, second appeal is dismissed for want of any substantial question of law.

9. Since second appeal is dismissed, civil application seeking interim relief does not survive and hence dismissed.
10. At this stage, the request is made on behalf of learned counsel appearing for the appellant that it may be observed that dismissal of the present appeal may not come in the way of suit which is filed by the heirs and legal representatives of Asaram. Needless to record that nothing with respect to that suit is part of the present proceeding, and that second appeal is decided only on the basis of

record and proceedings of the present suit.

**[ GAURI GODSE ]**  
**JUDGE**