

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.857 OF 2001
WITH
CIVIL APPLICATION NO.1028 OF 2001
WITH
CIVIL APPLICATION NO.710 OF 2002
IN
SECOND APPEAL NO.857 OF 2001**

Shri Kailas Parsu Ainkar

...Appellant

Versus

1) Ananta Narayan Ainkar

2) Hari Narayan Ainkar (Since Deceased)

Thr. His Legal Heirs and Representatives and Ors. ...Respondents

- Mr. Piyush Shah a/w Jay Vora and Kiran Patil, for the Appellant.
- Mr. Ravindra V. Sankpal i/b. R.V. Sankpal & Associates, for the Respondents.

CORAM : VINAY JOSHI, J.

DATE : 21st SEPTEMBER 2023

P.C.:

1. This is plaintiff's Second Appeal raising a challenge to the judgment and order passed by the First Appellate Court dated 18th November 1999 in Civil Appeal No.78 of 1998 by which the decree passed by the Trial Court in Regular Civil Suit No.40 of 1985 dated 31st March 1998 has been reversed.

2. The Appellant/ plaintiff has filed a suit for perpetual injunction

claiming to be the owner and possessor of suit property which is consisting of three pieces of agricultural land as described in the plaint. The defendant resisted the suit equally claiming to be the owner and possessor of the suit property. The Trial Court has not restricted the scope of the suit to the extent of settled possession but has framed the issue about the ownership of the suit property along with possession. On the basis of revenue extract of the year 1985, the Trial Court held plaintiff's possession and accordingly passed a decree of perpetual injunction.

3. Being aggrieved the original defendant came in the First Appeal challenging the judgment and order of Trial Court. It is the defendants contention that they are owner and possessor of the suit property. The defendants have produced one document of the year 1941 titled as mortgage/ conditional sale deed alleged to have been executed by the defendants' grandfather in favour of plaintiff's grandfather. According to the defendants, their grandfather has refunded the entire money for which there has been endorsement on the document. The defendants claimed to have reacquired the ownership of the suit property. Admittedly, the defendants have not produced any documents including the revenue extract to show their possession. Surprisingly, none of the parties have filed revenue extracts preceding to the year 1985 when the suit was came to be filed.

4. Defendants though claimed ownership, have not specifically pleaded that by virtue of document Exh.90 of the year 1941, ownership remains with them. Likewise, plaintiff too though claimed ownership never pleaded as to how their forefathers have acquired ownership. None of the parties led evidence about the ownership before the Trial Court. Rather the document at Exh.90 appears to be crucial one which though marked by Trial Court, however, neither evidence was led on such document nor cross-examined by rival. In the circumstances, it necessitates that the parties shall lead evidence on title which is a crucial aspect of the case. The Trial Court ought not to have ventured in recording finding of title without evidence of other side.

5. In above situation, both the learned counsel conceded that the matter can be remanded to the Trial Court with permission to both to lead evidence to establish title as well as possession. In view of that, by consent, the following order is passed :-

ORDER

- (i) The impugned judgment and order dated 18th November 1999 passed in Civil Appeal No.78 of 1998 along with the judgment and order dated 31st March 1998 passed in Regular Civil Suit No.40 of 1985 is hereby quashed and set aside;
- (ii) Regular Civil Suit No.40 of 1985 is restored to its original

stage.

- (iii) Both the sides are at liberty to suitably amend their pleadings and they shall be permitted to lead additional evidence.
 - (iv) The Trial Court shall permit both the sides to produce additional documents subject to relevancy.
 - (v) Both the parties shall appear before the Trial Court on 16th October 2023.
 - (vi) The Trial Court shall endeavour to decide the suit within the period of one year from the date of appearance of both the parties.
 - (vii) Parties shall maintain status-quo regarding the possession of suit land till the disposal of the suit.
 - (viii) R & P be sent back to the Trial Court.
6. All contentions raised in this appeal are kept open.
 7. Appeal stands disposed in above terms.
 8. All pending applications shall stand disposed of accordingly.

[VINAY JOSHI, J.]