

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 260/2021

Smt. Tarabai Wd/o Kisan Hadke Vs Ajabrao S/o Nathuji Dhoke And 2 Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri G.M. Shitut, advocate for the appellant.

Shri B.K. Bisen, advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 02/02/2023

The concurrent finding, as regards the possession of the plaintiff over the suit property, and thereby granting a permanent injunction in favour of the plaintiff by both the Courts below have been questioned by the defendant in the present second appeal.

2. This Court, vide order dated 07/12/2021 framed the following substantial question of law:-

“In view of the fact that the courts below have held that the plaintiff has failed to prove Agreement of Sale, dated 19/04/2002, whether the decree of permanent injunction granted by both the Courts below, is just and proper?”

3. The brief facts of the present case are as follows:-

It is the case of the plaintiff that, the plaintiff has purchased the house from one Jaideo Govinda Patil. According

to the plaintiff, he is living in the said house. It is also the case of plaintiff that he purchased the said house by way of an Agreement to purchase which has been executed by the said Jaideo Govinda Patil. According to the plaintiff, the house of defendant No.1 is on the northern side of the plaintiff's house while the house of defendant Nos. 2 and 3 is on the eastern side.

4. It is further case of the plaintiff that, the defendants have obstructed the minor repair work, which the plaintiff wants to carry out. Hence, the plaintiff filed a complaint to the Police Station. It is also the case of plaintiff that the defendants are putting waste materials near the house of the plaintiff. Plaintiff has, therefore, approached this Court seeking the relief of declaration and injunction against the defendants.

5. The learned trial Court proceeded ex-parte against the defendant No.1 and without written statement against the defendant No.3.

6. The present appellant is the defendant No.2, who opposed the suit by filing the written statement Exhibit 31.

7. The learned trial Court after scrutiny of the oral as well as the documentary evidence has held that the plaintiff failed to prove the agreement to sell dated 19/4/2001 and accordingly the decree for declaration was denied. However, finding that the plaintiff is in possession of the suit property, permanent injunction was granted in favour of the plaintiff.

8. The defendant No.2 feeling aggrieved by the order dated 18/12/2003 filed an appeal vide Regular Civil Appeal No. 303/2004, which came to be dismissed by confirming the judgment and decree of the learned trial Court vide judgment and decree dated 24/1/2008, which is the subject matter of the present appeal.

9. Shri G.M. Shitut, learned advocate for the appellant has submitted that the finding recorded by the both the Courts below as regards the possession of the plaintiff is perverse, as the witnesses of the plaintiff failed to state in their depositions about the description of the property and therefore, it is not proved that the plaintiff was in possession of the suit property. He, therefore, submits that both the Courts below have committed error.

10. On the other hand, Shri U.K. Bisen, learned advocate for the respondent/plaintiff supports the findings recorded by the both the Courts below, and submits that the findings are based on oral evidence as well as documentary evidence. It is submitted that, no perversity has been committed by both the Courts below. Accordingly, he prays for dismissal of the present appeal.

11. In the light of the rival contentions of the parties, I have perused the record and both the impugned judgments and decree.

12. From the record, it is evident that the plaintiff has examined two witnesses, who are the residents of same area and both the witnesses have categorically deposed in favour of the plaintiff that the plaintiff is residing in the suit house.

13. As far as the cross-examination is concerned, in the cross-examination, the suggestions like the names of neighbours and the house numbers were asked. However, there is no suggestion given to any of the witnesses to the effect that the plaintiff is not residing in the house of the defendant.

14. Thus, both the Courts below have rightly held that, though the agreement of sell is not proved, but the possession has been proved by the plaintiffs. Hence, I do not find any perversity regarding the concurrent findings of the facts as regards the possession of the plaintiff. In the circumstances, I am not inclined to interfere with the judgment and decree of both the Courts below. Accordingly, the second appeal is **dismissed**.

JUDGE