



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 130 OF 2024

1. Sow. Harbhajankaur W/o. Sardulsingh Fouji
 2. Vijaysingh S/o. Shardulsingh Fouji
- ... APPELLANTS**

(Ori. Plaintiffs)

VERSUS

1. Vijay Narayandas Rizwani
 2. Pradeep S/o. Narayandas Rizwani
 3. Shardulsingh S/o. Hirasingh Fouji
- ... RESPONDENTS**

(Ori. Defendants)

...
Mr. Arun G. Kanade h/f. Mr. R.B. Narwade Patil – Advocate for Appellants
....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 23rd July, 2024

ORDER :

1. Heard learned Counsel for the appellants/plaintiffs on admission.
2. The appellants who are the original plaintiffs in Regular Civil Suit No. 331 of 2007 have challenged the judgment and decree dated 29.04.2017 passed in the aforesaid Special Civil Suit by learned 4th Joint Civil Judge Junior Division, Nanded (hereinafter referred to as ***“the learned Trial Court”***) and also the judgment and decree dated 20.09.2023 passed by the learned District Judge – 3, Nanded (hereinafter referred to as ***“the learned First Appellate Court”***) in Regular Civil Appeal No. 63 of

2017.

3. The appellants/plaintiffs have filed the aforesaid suit being a simplicitor suit for injunction in respect of land block No. 50 (Survey No. 12/2/B) ad-measuring 08 Acre 30 R to the extent of 40 and 44 R areas situated at village Kautha, Tq. and Dist. Nanded. According to the appellants/plaintiffs, the aforesaid suit land was owned by husband of appellant No.1 i.e. original defendant No.3 who had given the same to them for their maintenance under agreement dated 20.08.1980. Further, according to the appellants since the respondent Nos.1 and 2 were obstructing their possession, appellant No.1 was constrained to file the aforesaid suit. The learned Trial Court after conducting trial dismissed the said suit. Thereafter the appellants/plaintiffs have challenged the dismissal of said suit by filing Regular Civil Appeal No. 63 of 2017, but vide judgment dated 20.09.2023 the learned First Appellate Court confirmed the decree passed by the learned Trial Court and dismissed the appeal. As such, present Second Appeal is filed by the appellants/plaintiffs against the concurrent findings of both the learned Courts below.

4. Learned Counsel for the appellants vehemently argued that, both the learned Courts below have failed to appreciate the evidence on record and wrongly held that, the appellants/plaintiffs could not

establish their possession over the suit property. He pointed out that, the learned Trial Court has wrongly observed that, it is a collusive suit filed by the appellants/plaintiffs with original defendant No.3. He also raised so many substantial questions of law as mentioned in the appeal memo of this Second Appeal.

5. On going through the findings of both the learned Courts below it is clearly evident that, this is only a simplicitor suit for injunction and therefore, it is only to be seen whether the plaintiffs have established their possession over the suit land. Though appellant No.1 claimed that, defendant No.3, who is her husband, had given the suit land to her in lieu of maintenance, but her entire evidence before the learned Trial Court clearly indicated that she does not know anything about the suit land. She could not even state, whether 7/12 extract of the same was seen by her and whose names were mutated in 7/12 extract of the suit lands. She could not even state, as to how much portion of the suit land is constructed and how much is under cultivation, and whether certain income is derived from the suit land. She also admitted that, the entire area of the suit land is also not under cultivation since past 25 to 30 years. Not only this but evidence of her witness Balaji who posed himself as a caretaker of the suit land, also does not inspire confidence. There is nothing on record to show that, he was authorized caretaker of the

appellants/plaintiffs. Moreover, this witness has also admitted in his cross-examination that, he is resident of some other village and did not reside at Kautha village where the suit land is located. He also could not state the area of the suit land.

6. It is extremely important to note that, though the plaintiffs have claimed that, present respondent No.3 i.e. original defendant No.3 had given the suit land to them for their maintenance under agreement dated 20.08.1980, but the appellants/plaintiffs failed to produce the said agreement on record. Thus, considering the evidence laid by the plaintiffs and their witness, both the learned Courts below have concurrently held that the appellants/plaintiffs have failed to establish their possession over the suit property. The learned First Appellate Court has also considered the evidence on record minutely and therefore, no substantial questions of law as mentioned in the appeal memo appear to be involved in this matter, which is only a simplicitor suit for injunction. In view of the same, the Second Appeal stands dismissed at admission stage.

7. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE