



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

927 SECOND APPEAL NO. 142 OF 2023

**SHANTABAI @MOHARABAI VASANTRAO NIMBALKAR
VERSUS
SHAHAJI SHAHURAO NIMBALKAR**

.....
Advocate for Appellant : Mr. Deshmukh Rahul Rajiv
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**CORAM : Y. G. KHOBRAGADE, J.
DATE : 19.03.2024**

PC:-

1. Heard Mr. Rajiv Deshmukh, the learned counsel appearing for the appellant at length.
2. Present appeal under Section 100 of the C.P.C. is directed against the Judgment and Decree dated 29.07.2022 passed in First Appeal bearing R.C.A. No.106/2017 by the learned District Judge-2, Osmanabad, thereby confirming the Judgment and Decree dated 04.08.2017 passed in civil suit bearing R.C.S. No.569/202 by the learned 4th Jt. C.J.J.D., Osmanabad.
3. Appellant Nos. 1 to 4 are the legal heirs of original defendant no. 1 - Vikram Vasant Nimbalkar. The respondent nos. 1 to 3 are the original plaintiff. The respondent no. 4 is the original defendant no. 2 and respondent

no. 4 is the original defendant no. 3. For the sake of brevity I would like to refer the parties to the second appeal in their original capacity as plaintiff and defendant.

4. The plaintiffs have filed a civil suit bearing R.C.S. No.569/2012 for perpetual injunction restraining the defendants from interfering with the possession of suit property. According to the plaintiffs, they are real brothers and the defendants are their cousins. The land survey nos. 108/2 and 108/3 are their ancestral property. The four corner of their ancestral property is as under:

East: Survey no.909

West : Survey no.108/2

North: Fields of Rajendra Raosaheb Nimbalkar

South : Land of defendant nos.2 and 3 Balasaheb and Madhukar respectively.

5. According to the plaintiffs though they are in peaceful possession of the suit property, however, they used to stay at another village away from field. They do not have manpower, therefore, by taking advantage of their absence and in order to grab some portion of their suit property, the defendants started to obstruct their peaceful possession over the suit property, hence, prayed for decree and perpetual injunction restraining the defendants from interfering with their possession over the suit property.

6. The defendants filed their written statement at Exh.31 and resisted the suit. According to the defendants no description of the property given in detail. The four corners of suit property does not tally with the revenue record. According to the plaintiffs, they measured the suit land and as per measurement they are in possession of survey no.108/2 admeasuring 1 H 41 R and possession of survey no.108/3 ad-measuring 0.93 R. Therefore, the plaintiffs are very much aware about their land, but the plaintiffs suppressed said fact. The defendants denied about interfering with the possession of the plaintiffs over their land, hence, prayed for dismissal of the suit.

7. On the basis of the rival pleadings of both the sides the learned trial Court framed five issues. The plaintiffs examined Shivaji Shahurao Nimbalkar, the plaintiff no.3 who has filed evidence affidavit at Exh. 30. In evidence of PW-1/plaintiff no.3 he stated that, he annexed sketch map of the suit land with the plaint. The plaintiffs undergone cross-examination conducted on behalf of the defendant no.1. The plaintiff no.3 admitted about non production of documentary evidence to show that the land survey nos. 108/2 and 108/3 are towards west side and adjacent to each other. The plaintiff no.3 further admitted that they are in possession of their properties.

8. The defendant no.1 Vikram Vasant Nimbalkar filed evidence affidavit and admitted in his cross-examination that the land was allotted to the plaintiffs father – Shahurao Nimbalkar bearing S. no.108/2 situated on southern side of his land. Defendant no.2 was examined at Exh.59. The defendant no.2 admits that the suit properties are the ancestral property and it was partitioned between defendants and plaintiffs' father. The defendant no. 2 admitted in his cross-examination that he has not made encroachment on the plaintiffs land.

9. On the basis of evidence available on record, the learned trial Court held that the plaintiffs are in possession of their suit property allotted to their father in partition. There are no allegations that the plaintiffs encroached upon the land of the defendants. So also, the defendants have no right over the suit property. Both the defendants have challenged the description of the suit property, but they have not adduced evidence to prove how the description of the properties is wrong. The entries in 7/12 extract in respect of the suit properties are in the name of plaintiffs and they are shown as cultivators. Though, the plaintiffs pleaded that the defendants tried to disturb their possession or interfere with their possession over the suit land, but no sufficient evidence has been adduced to prove about causing interference with the possession of the plaintiffs over the suit land.

10. On perusal of record it appears that, on 29.07.2022, the learned First Appellate Court re-appreciated entire evidence available on record and held that, the land allotted to plaintiff's father Shri Shahurao Nimbalkar bearing S. No. 108/2 situated at southern side of his land. The Revenue record Exh. 6 & 7 reveals that, S. No. 108/3 admeasuring 9 Acres and 39 Guntha out of which name of the plaintiff is recorded to the extent of area 3 Acres land. The 7/12 Extract of S. No. 108/2 shown area of land admeasuring 7 Acres and 27 Guntha and plaintiffs name recorded to 4 Acres of land.

11. It is not the case of the defendants or the plaintiffs about making vice versa encroachment on their properties. The plaintiffs are in possession of the survey nos.108/3 and 108/2. No substantial material produced on record to show that, the defendants tried to interfere with possession of the plaintiffs over the suit property. Therefore, the plaintiffs are not entitled for perpetual injunction. The findings recorded by both the Courts below are based on oral as well as documentary evidence. No substantial question of law arises to interfere with the findings recorded by both the Courts below, hence, **appeal is dismissed**. No order as to cost.

[Y. G. KHOBRAGADE, J.]