

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 87 OF 2024

Sundar Natthu Pawar

Age : 54 yrs, occ : agri.,

R/o Tawalai, Taluka Shahada,

District Nandurbar

Appellant

Versus

Posalya Rotu Bhil (Padvi)

Age : 52 yrs, occ : agri.,

R/o Tawalai, Taluka Shahada,

District Nandurbar,

Respondent

...

Mr. R.L. Jakhade, Advocate holding for Mr. S.A. Kulkarni,
Advocate for the appellant.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 2 AUGUST 2024

Order :

1. The appellant, who is the original defendant, has challenged the concurrent findings of both the learned Courts below in the present Second Appeal

2. The respondent/original plaintiff filed Regular Civil Suit No.5/2016 in the Court of the Civil Judge (Senior Division), Shahada, District Nandurbar i.e. the learned trial Court, against the present appellant for perpetual injunction restraining him from obstructing peaceful possession of plaintiff over the suit land Gut No. 138 at village Tawalai,

Taluka Shahada, District Nandurbar. The learned trial Court decreed the said suit vide judgment and order dated 10.12.2019. The said judgment is carried by the present appellant in Regular Civil Appeal No.43/2022 before the learned *Ad hoc* District Judge-1, Shahada i.e. the learned first appellate Court. However, the learned first appellate Court dismissed the said appeal vide judgment dated 02.01.2024 by confirming the decree of learned trial Court. Hence this Second Appeal.

3. Learned Counsel for the appellant while arguing on admission, raised substantial question of law that both the learned Courts below failed to consider the aspect of transfer of suit land in favour of the appellant by erstwhile owner Tikibai for valuable consideration of Rs. 34,000/-. According to him, under the said transfer the appellant/defendant is in fact in possession of the suit land.

4. However, on going through the concurrent findings of both the learned Courts below, it appears that respondent/plaintiff has claimed that the suit land has been devolved upon him and his other family members by way of succession and the present appellant is not having any concern with the said land. It is specifically observed by both the Courts below

that the plaintiff has produced on record the relevant mutation entry showing as to how the suit land is inherited by plaintiff and his family members. Further, it is also noted down that the present appellant/defendant had initially come with a case that Tikibai transferred the suit land to him by accepting valuable consideration of Rs.34,000/-, but thereafter through his witnesses the appellant put-forth another story by claiming that the plaintiff and his other family members had in fact transferred the suit land to him. There is no pleading in his written statement about the subsequent story. Further, it is extremely important to note that the respondent belongs to Scheduled Tribe, and therefore, the suit land being the land of persons belonging to Scheduled Tribe, cannot be handed over to third person without permission of Competent Authority, such as Collector. Therefore, considering all these facts and concurrent findings of both the learned Courts below, there is no substantial question of law involved in this Second Appeal. In the result, the Second Appeal stands dismissed at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)