



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

SECOND APPEAL NO. 642 OF 2013

Manohar s/o Rangnath Shinde, ... **Appellant**
Age 36 years, Occu: Agriculture
R/o Salegaon (Ghare) Tq. & Dsit. Jalna

VERSUS

Sow. Saraswatibai w/o Sonaji Shinde ... **Respondent**
Age 53 years, Occu: Hosuehold
R/o Salegaon (Ghare) Tq. & Dsit. Jalna

Mr. D. A. Bide, Advocate for the Appellant

CORAM : Y. G. KHOBRADE, J.

Dated : 19th March, 2024

PER COURT :-

1. Heard Shri D. A. Bide, the learned counsel appearing for the appellant at length.
2. Present Appeal under section 100 of the Civil Procedure Code is directed against the judgment and Decree dated 15th January, 2013 passed by the learned District Judge-1, Jalna in Regular Civil Appeal No. 13 of 2009, thereby confirmed the judgment and decree dated 20.12.2008 passed by the learned 4th Joint Civil Judge (J. D.), Jalna in Regular Civil Suit No. 314 of 2007.
3. The Appellant is original defendant and Respondent is original plaintiff in Regular Civil Suit No. 314 of 2007. For the sake of brevity,

I would like to refer the parties to the present appeal in their original capacity as plaintiff and defendant.

4. The plaintiff filed Regular Civil Suit for permanent injunction on the ground that, she is owner and occupier of land Gut No. 66 admeasuring 82 R situated at village Salegaon (Ghare) Taluka & District Jalna. According to the plaintiff, the suit land was owned by her father-in-law namely, Bapurao. In the year 1981, her father-in-law gave suit land to her towards her maintenance as her husband was not maintaining her. Further, her father-in-law had also given 2 acres land to Smt. Devkabai, the mother of defendant for her maintenance. Therefore, the defendant has no concern with the suit land and she is in continuous possession of the suit land and sometime she used to reside at village Shahapur- Dadegaon and cultivating land through labourer. Shri Rangnath, who is father of the defendant and real brother of her husband, was helping her while cultivation, however, in the year 2007, when she was cultivating the land through laborers, at that time, the defendant visited and threatened her to dispossess and obstructed her peaceful possession over the suit land. Therefore, she had instituted a Suit bearing R.C.S. No. 314 of 2007 and prayed for decree of permanent injunction restraining the defendant, his agent or any person on his behalf from obstructing her possession over the suit land.

5. The defendant filed written statement at Exh. 13 and resisted claim of the plaintiff. The defendant admitted the relation between him and the plaintiff, however, he denied ownership and possession of the plaintiff land over the suit land. According to the defendant, suit land owned by his grandfather and father-in-law of the plaintiff namely Shri Bapurao. According to the defendant, the plaintiff made a grievance with her father-in-law about her husband and threatened of false implication of her husband and father-in-law in matrimonial proceedings. Therefore, the father-in-law of the plaintiff nominally mutated name of the plaintiff in the revenue record, however, subsequently, actual partition was effected and suit land allotted to the share of the defendant's father. Since then, defendant's father is in possession and cultivating the suit land. However, for last 4 to 5 years, defendant's father was bed ridden and by taking this undue advantage, the plaintiff got mutated her name in the revenue record in respect of the suit land. After the defendant's father came to know about fact of mutation entry in the revenue record in the name of plaintiff, the grievance was raised before the Tahsildar, who then made an enquiry through the Revenue Inspector and drawn Panchanama in respect of the suit land. The defendant further contended that husband of the plaintiff is alive and he sold land of his share. The defendant further pleaded that, he made several requests to the plaintiff to remove

her name from the ownership column of revenue record, however, the plaintiff fail to pay heed and trying to sell the suit land. The Defendant claimed that, on 22.06.2007, he sown Brahmaparas BT cotton in the suit land and he is in possession of the suit land, hence, prayed for dismissal of the suit.

6. On the basis of rival pleadings, the learned trial court framed Issues 1 to 4 at Exh. 21. In order to substantiate the claim, the plaintiff PW-2 examined herself so also, examined PW-2 Jairam Bapurao Mane. The plaintiff proved 7/12 extract at Exh. 27 for the year 2003-2004 and 2004-2005 in respect of the suit land. On the other hand, the defendant Manohar Rangnath Shinde examined himself DW-1 and also examined witnesses DW-2 Prabhakar Naiknaware, DW-3 Trimbak Ghare and DW-4 Sonaji Pant Kokate (Talathi). The defendant also produced 7/12 extract at Exh. 32 for the year 1983-84 to 1999-2000 and Panchanama Exh. 39.

7. On 20.12.2008, the learned trial court passed the Judgment and decree holding that, the defendant claims possession over the suit land through his father namely Rangnath Shinde, however, nothing is brought on record to prove that, suit land was allotted to the defendant's father in partition. The defendant has not disputed that plaintiff's father-in-law gave suit land to her towards maintenance. The

plaintiff proved her possession over the suit land since 1981 as she cultivating the same through labours as well with help of defendant's father. The 7/12 extract produced by the defendant does not show mutation entry that the defendant was in possession and cultivating the suit land either prior to death of his father or subsequently.

8. Per contra contra, the record/evidence which have been produced by the plaintiff proves that, neither the defendant's father during his life time, nor the defendant at any time challenged ownership and possession of the plaintiff over the suit land. Therefore, the defendant failed to establish that he was in possession of the suit land. On the contrary, 7/12 extract Exh. 27 proves that the plaintiff cultivating and in possession of the suit land even prior to the death of defendant's father.

9. DW-4 Sonaji Panth Kokate (Talathi) admitted in his cross examination that, since 2002-2003 to 2006-2007, the plaintiff is shown being a owner and she in possession and cultivating the suit land. Therefore, the learned trial court decreed the suit and permanently restrained the defendant, his agent or any person on his behalf from disturbing the peaceful possession of the plaintiff over the suit land bearing Gut No.66 admeasuring 82 R situated at village Salegaon (Ghare).

10. The learned counsel for the appellant/defendant placed reliance on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 722 of 2022 in the case of ***Tahsildar, Urban Improvement Trust & another Vs. Ganga Bai Menariya (Dead) Through LRs and others***, wherein it has been held that, simpliciter suit for injunction may not be maintainable as the possession of the plaintiff/respondent was disputed by the appellant/defendants. In such situation, it was required for the respondent/plaintiff to prove title of the property while praying for injunction.

11. However, in the case in hand, the plaintiff claimed to be the owner and in possession of the suit land. The plaintiff pleaded that the defendant trying to interfere with her possession. The defendant denied title of the plaintiff over the suit land. However, the defendant failed to prove that, plaintiff is having no title over the suit land. Therefore, in the facts and circumstances of the case in hand, the simpliciter suit for permanent injunction is maintainable without seeking declaration and title and cited case is not applicable to the facts and circumstances of the present case.

12. While passing the impugned Judgment and decree, the learned First Appellate Court re-appreciated entire evidence available on record. So also, both the Courts below concurrently held that, the

respondent/ plaintiff is in possession of the suit land and dismissed the appeal. Hence, I do not find that any substantial question of law is involved. Therefore the present appeal is dismissed. No order as to costs.

(Y. G. KHOBRADE, J.)

JPChavan