



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

**SECOND APPEAL NO. 10 OF 2024
WITH
CIVIL APPLICATION NO. 1058 OF 2024**

1. Satish s/o Vardhaappa Ardhapure,
Age L 56 Years, Occ. Agriculture
2. Eknath @ Balu s/o Vardhappa
Age : 64 Years, Occ. Agriculture,
Both resident of Umri (Daryabai)
Taluka Hadgaon, Dist. Nanded.

.. Appellants
(Orig. Defendants)

V E R S U S

Jeevanrao s/o Shrinivas Umrikar,
Age : 76 Years, Occ. Agriculture,
through Power of Attorney,
Sagar S/o Jeevanrao Umrikar,
Age : 45 Years, Occ. Advocate,
R/o. Umri (Daryabai) Tq. Hadgaon,
District Nanded at present resident
of Near Jama Masjid Hadgaon

.. Respondent
(Orig. Plaintiff)

....

Advocate for the Appellants : R. R. Shaikh

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 02.05.2024

ORDER:-

1. Heard the learned counsel for the appellants/original defendants on admission.
2. The present Second Appeal appears to be filed against the concurrent findings of both the learned Courts below.
3. The present respondent, who is the original plaintiff, filed suit bearing Regular Civil Suit No. 30 of 2014 in the Court of learned Joint Civil Judge, (Junior Division), Hadgaon

(hereinafter referred to as “the learned trial Court”) for declaring him as owner and possessor of Gram Panchayat House No. 23 situated at Umari (Daryabai), Taluka Hadgaon, District Nanded. He also prayed reliefs of perpetual injunction and damages against the present appellants/defendants. The appellants/defendants resisted the suit under their written statement at Exh.21 by denying all the adverse allegations made against them. According to them, they are the owners of house property No. 38 of village Umari and in fact constructed house on their own land.

4. During the pendency of the suit, the plaintiff/respondent amended the suit with leave of the learned trial Court and raised plea of making encroachment on his land and of making construction thereon at the hands of appellants/defendants. The plaintiff therefore, claimed recovery of possession of the aforesaid encroached portion.

5. The learned trial Court on 29.11.2017 was pleased to decreed the suit partially, directing the defendants to remove the construction raised by them on the suit property i.e. house property No. 23 admeasuring 22 x 20 sq. ft. and to hand over the vacant possession of the same to respondent/plaintiff. The learned trial Court has, thus, declared the

respondent/plaintiff as owner of the suit property.

6. Feeling aggrieved with the aforesaid judgment and decree passed by the learned trial Court dated 29.11.2017, the present appellants preferred Regular Civil Appeal No. 168 of 2019 before the learned District Judge-3 Nanded i.e. the learned First Appellate Court, on 07.02.2018. However, the learned Appellate Court vide judgment and order dated 18.08.2023, has dismissed the appeal by upholding the judgment and decree passed by the learned trial Court. Hence, this Second Appeal.

7. The learned counsel for the appellants/defendants submits that both the learned Courts below have failed to appreciate the evidence on record in proper perspective. According to him, this appeal involves following Substantial Question of Law :

(A) Whether both the learned Courts below have erred in holding the respondent/plaintiff owner of the house property bearing Gram Panchayat No. 23 only on the basis of entry in 8-A extract issued by the Gram Panchayat ?

8. On perusal of both the judgments by the learned Courts below, it is evident that the plaintiff has examined himself and his son, who deposed according to their claim. Further, the

plaintiff has also relied on order passed by the Tahsildar Hadgaon and District Collector, Nanded which has been translated from Urdu language to Marathi language and also examined the said translator as P.W. No.3. However, the learned First Appellate Court refused to rely on the said orders as they were not made part of the pleading. However, the record shows that the respondent/plaintiff had also examined one Extension Officer of Panchayat Samiti, Hadgaon namely Ramrao Dhansingh Jadhav as P.W. No.4, who deposed that plaintiff had filed written complaint before the Block Development Officer, Panchayat Samiti, Hadgaon, alleging that the present appellant No.1, who was already having his own house, claimed another house under the Government policy. The aforesaid Extension Officer had made enquiry in the said matter and the report of his enquiry is also on record at Exh.56 which is dated 24.04.2014. As per this witness, it was found that the respondent/plaintiff owns property house No. 23 admeasuring 22 x 20 sq.ft., whereas appellant No.1 owns property House property No. 38 admeasuring 44 x 40 sq.ft. According to this witness, the appellants got mutated house No. 38 in their name showing more area than the actual area. He has stuck up to his statement that plaintiff is owner of house No. 23 admeasuring 22 x 20 sq.ft. According to him, the

appellants/defendants had undertaken construction of *Gharkul* by encroaching upon the open space of respondent/plaintiff's house No. 23. It is extremely important to note that the appellants/defendants failed to cross examine any of the witnesses of the plaintiff and therefore, the entire evidence led by the respondent/plaintiff remained unchallenged.

09. The learned counsel for the appellants relied upon the judgment of the Chhattisgarh High Court in the case of ***Gauhar Ali, S/o Late Ibrahim Ali Versus Municipal Corporation, Malviya Road, Raipu LAWS (CHH)-2016-8-37.*** Admittedly, it is mentioned in the aforesaid judgment about the observations of Hon'ble Apex Court as follows :-

“ 26. An entry in the Municipal record is not evidence of title. The entry shows the person who was held liable to pay the rates and taxes to the Municipality. The entry may also depending on the scope of the provision contemplating such entry constitute evidence of the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes...”

10. However, it can be seen that the observation of both the learned Courts below about the ownership of the plaintiff over the suit house No. 23 is not based only on the entry in 8-A extract of the Gram Panchayat, but it is also based on the evidence of P.W. No.4. who had made enquiry in respect of house properties of plaintiff and the appellants/defendants which are distinct from each other. Thus, the judgment relied upon by appellants is not helpful to them. In view of the same, no substantial question of law as raised by the learned counsel for the appellants appears to be involved in this appeal. There are concurrent findings in favour of the respondent/plaintiff by both the Courts below and therefore, no substance is found in the present appeal. As such, the Second Appeal along with pending Civil Application No. 1058 of 2024 stands dismissed at admission stage.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni