

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.96 OF 2023

SHIVAJI BAPU SAWANT AND ORS

....Appellants

 V/S

DEVIDAS TUKARAM SAWANT

....Respondent

Mr. Kalpesh U. Patil for the Appellants.

Mr. Ajit J. Kenjale a/w Mr. Azharuddin Khan for Respondent.

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 08, 2024.

P.C.:

1 This Appeal is filed challenging the judgment and order dated 19 April 2021 passed by the District Judge, Vaduj, District Satara, in Regular Civil Appeal No.50 of 2016 by which the First Appellate Court has allowed the Appeal filed by the Respondent and has reversed the decree dated 27 April 2016 passed by the 3rd Joint Civil Judge Junior Division, Vaduj, decreeing the suit.

2 I have heard Mr. Patil, the learned Counsel appearing for the
Appellants and Mr. Kenjale, the learned Counsel appearing for the
Respondent.

3 The learned Counsel appearing for the Appellants would submit that Appellant No.1 has expired. Leave is granted to bring on record names of legal representatives of the Appellant No.1. Amendment to be carried out forthwith.

4 Both the learned Counsel appearing for the parties have canvassed submissions on merits of the Appeal. Regular Civil Suit No.2 of 2012 was filed by the Appellants for a declaration that they are the owners of the land bearing Gat No.295 and seeking injunction against the Defendants from causing obstruction to their possession. An alternate prayer is made in the suit that in the event of the Court arriving at a conclusion that the Defendants are in possession of the suit property, the possession thereof be granted to the Plaintiffs. The Trial Court proceeded to decree the suit on 27 April 2016 essentially relying on the sale deeds executed in favour of the predecessor in title of the Plaintiffs and Defendants. However what is completely ignored by the Trial Court is the fact that the Plaintiffs had instituted Regular Civil Suit No.265 of 1978 for the very same purpose of recovery of possession of encroached portion from the Defendants. The said suit was dismissed by the judgment and order dated 2 May 1992. The Plaintiffs filed Regular Civil Appeal No.333 of 1992 before the District Court at Satara, which remanded the suit for fresh trial with a direction to both the parties to conduct joint measurement in respect of the suit property. However, it appears that no further action was taken in the remanded suit and therefore the suit came to be dismissed for default by order dated 6 May 2000. Twelve years later, Plaintiffs have instituted fresh suit bearing RCS No.02 of 2012 once again seeking the relief of recovery of possession of encroached portion of the land from the Defendants. The Lower Appellate Court has held that once Regular Civil Suit No.265 of 1978 was dismissed, it was not open for the Plaintiffs to institute one more suit for the same relief.

5 Mr. Patil would submit that a fresh cause of action got created in favour of the Plaintiffs on account of which Regular Civil Suit No.2 of 2012 has been instituted by them. I have gone through the plaint filed in Regular Civil Suit No.2 of 2012. In the plaint, Plaintiffs have made averments about filing of Regular Civil Suit No.265 of 1978 is dismissed on 2 May 1992 and passing order dated 24 March 2000 by the Appellate Court in RCA No.333 of 1992 remanding the suit. The Plaintiffs have thereafter averred that “in the meantime” the Defendants handed over possession of the encroached portion in Gat No.295 in favour of the Plaintiffs. Plaintiffs have further averred that despite such handing over of possession of encroached portion, the Defendants filed Application dated 15 June 1988 before the Director of Land Records, Pune, for correction in the consolidation scheme. That a corrigendum was issued on 7 February 1994 correcting the consolidation scheme. The plaint further avers that the suit is filed for the purpose of seeking a declaration that the corrigendum for correction of consolidation scheme is illegal and that the previous consolidation scheme prior to corrigendum was proper. With these pleadings, Plaintiffs averred that cause of action for filing the suit arose on 1 December 2011.

6 After perusal of the averments in the plaint, I find several inconsistencies in statements made therein. Plaint proceeds on a footing that the Defendants handed over possession of the encroached portion. Use of the expression “in the meantime” suggests as if the event of handing possession occurred after the suit was remanded by the District

Court by order dated 24 March 2000. However, the Plaintiffs' contention that application for correction of consolidation scheme was filed on 15 June 1988 would show as if the event of alleged handing over of possession took place prior to 15 June 1988. If this is the position, the said event must have been or ought to have been brought to the notice of the Trial Court by the Plaintiffs at the time of decision of RCS No.265 of 1978 on 2 May 1992. Thus filing of application for correction of consolidation scheme on 15 June 1988 or the issuance of corrigendum correcting the consolidation scheme on 7 February 1994 cannot be treated as events giving rise to a fresh cause of action to institute a fresh suit. The events of filing of application dated 15 June 1988 and issuance of corrigendum dated 7 February 1994 have occurred during pendency of RCS No.265 of 1978 and RCA No.333 of 1992. In my view therefore, the cause of action for filing both the suits appear to be same. On account of dismissal of RCS No.265 of 1978, Plaintiffs could not have instituted RCS No.2 of 2012 for same relief based on same cause of action. In my view therefore, no error can be traced in the order of the First Appellate Court reversing the decree passed by the Trial Court. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly rejected without any orders as to costs.

(SANDEEP V. MARNE, J.)