



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.134 OF 2011

Shri. Vinayak Sadhashiv Kelkar
Aged 62 years, Occ. Business and
Agriculture, R/o. at and post Malgund,
Taluka and District Ratnagiri

...Appellant

Versus

1. Eknath Vittal Sawant
Aged 52 years, Occ. Agriculture and Service
2.Sou. Saraswati Ganpat Sawant
Aged 45 yers, Occ. Household and Agriculture.
3.Sou. Archana Eknath Sawant
Aged 45 yers. Occ. Household and Agriculture.
4.Shri. Krishna Vittal Sawant
Occ. Agriculture
5.Sou. Laxmi Krishna Sawant
Aged 45 years, Occ. Household and Agriculture
All R/o. Nivendi, Tal and Dist. Ratnagiri.

...Respondents

Adv. Balkrishna Joshi a/w Adv. Virendra Pethe for the Appellant.
Adv. Sanjiv A Sawant a/w Adv. Samir M. Suryawanshi, a/w Adv.
Samiksha S. Mane for Respondent Nos. 1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : FEBRUARY 12, 2024
PRONOUNCED ON : MARCH 13, 2024

JUDGMENT :

1. Vide order dated 5th September, 2012 the Appeal came to be admitted. Being dissatisfied with the Judgment dated 8th December, 2010 passed by the Appellate Court in Civil Appeal No. 66 of 2006 allowing the Appeal and setting aside the Judgment and Decree of the Trial Court dated 29th June, 2006 resulting in dismissal of RCS No. 164 of 1996, the original Plaintiff is before this Court. For sake of convenience the parties are referred to by their status before the Trial Court.

PROCEEDINGS BEFORE THE TRIAL COURT

PLAINT:

2. Regular Civil Suit No. 164 of 1996 was instituted seeking an order of perpetual injunction restraining the Defendants from obstructing the Plaintiff's peaceful possession of the suit property being Survey No. 172, Hissa No. 10-B admeasuring 03.48 Are situated at Mauje Nevandi, Taluka & District -Ratnagiri. The case of the Plaintiff was that the area of the Survey No. 172, Hissa No. 10 was 05.03 Are and as per the order dated 18th August, 1992 passed by the Tenancy Court in Tenancy Application No. 51 of 1992 initiated at the instance of Defendant No. 2, the Defendant No. 2's family was declared as tenant in respect of area admeasuring 00.45 Are. The Defendant Nos. 1 and 2 are full blood brothers whereas the Defendant Nos. 3 to 5 are joint family members. As

against the order of Tahsildhar, the Defendant No. 1 had preferred appeal before the Sub Divisional Officer which was dismissed vide order dated 23rd January, 1996. Vide registered sale deed dated 20th January, 1993, the Plaintiff purchased an area of 03.48 Are out of Survey No. 172 Hissa No. 10 for purchase consideration of Rs. 70,000/- which was given separate number i.e. Survey No. 172 Hissa No. 10B. The purchased property is in possession of the Plaintiff and land was prepared for purpose of cultivation. As the possession of the Plaintiff was attempted to be obstructed by the Defendants on various occasions, complaints were made and the acts of the Defendants were temporarily halted. However, the Defendants are once again attempting to obstruct the peaceful possession of the Plaintiffs with the aid of female members of their family. The cause of action pleaded arose on 21st July, 1996 at about 3.00 pm when the Defendant Nos. 2 to 5 obstructed the Plaintiff from carrying out plantation of 300 mango saplings on the suit property when the Plaintiff had been to the suit property along with his labourers.

WRITTEN STATEMENT:

3. Written statement was filed by Defendant Nos. 1 and 3 contending to be in possession of the suit property since their forefathers as tenants thereof. The Tenancy Application No. 51 of 1992 was initiated by the Defendant No. 2 without knowledge and consent of the other family

members and in collusion with the Plaintiff, the order has been passed. Apart from the Defendant No. 1 and Defendant No. 2 there are other three brothers and sisters who are not made party to the Tenancy Application and the order of the tenancy Court is not binding upon them. The Plaintiff by exercising undue influence over the Defendant No. 2 has managed to obtain an order as regards the Defendants being tenant only in respect of 00.45 Are land. The Defendant's family since their forefathers are in possession of about 3.03 Are out of Survey No. 172 Hissa No. 10 and possession of the property was with the Defendant's family which was being cultivated by them. The Defendant No.1 had filed Regular Civil Suit No. 144 of 1993 seeking injunction by reason of which the Plaintiff stopped his activities of obstructing their possession. The mango orchards and cashew nut plantations of the original owner Mr. Bhide was on the southern side of the road and area of 3.03 Are was in the possession of the Defendant and his family members on which the Defendants had cultivated crops of Nachani, Till and Paddy etc. and the Defendants had planted mango saplings as well as cashew nut trees. Till the year 1986, the Defendants family was paying rent of Rs. 60 to the owners and after 1986, the rent of Rs. 200 was being paid. As the original owners were not residing in the village, one Prabhakar Bhide was appointed as the Power of Attorney holder and the Defendants were

paying the rent to the Constituted Attorney who had issued certain rent receipts. By reason of being deemed purchasers, the owners had no right to sell the suit property. In the year 1996, the Defendants had cultivated the land for the purpose of sowing Nachani and other crops and without having any right in the suit property during the pendency of Regular Civil Suit No. 144 of 1993 filed by the Defendant No. 1, the Plaintiff by misleading the Court obtained an ex-parte injunction order dated 2nd August, 1993, and on 5th August, 1996, illegally entered into the property which was in possession of the Defendants and has dug pits in the cultivated areas resulting in the destruction of the crops of the Defendants. The jurisdiction of Civil Court was challenged as the dispute was within the jurisdiction of the tenancy court.

COURT COMMISSIONER'S REPORT:

4. Pursuant to the application by the Defendants, the Trial Court appointed Court Commissioner to conduct spot inspection and submit a report about the factual position at site. The Court Commissioner visited the suit property on 27th September, 1996 at about 4.00 pm and conducted the spot inspection. At the time of his visit, the Plaintiff and his Advocate and the Defendant Nos. 1, 2 and 4 were present alongwith their Advocate. The draft report was prepared on 27th September, 1996 which was signed by all the concerned present at the time of the visit. The

Final report of the Court Commissioner was filed on 10th July, 1997, to which objection was raised by the Advocate for the Plaintiff.

EVIDENCE :

5. The Plaintiff examined himself and the Defendant No. 1 examined himself and three witnesses including the Court Commissioner in support of his case. The documentary evidence produced by the Plaintiff was 7/12 extract for year 2003-2004 showing an entry of encumbrance of Rs. 87 lakhs of Bank of Maharashtra, Mutation Entry No. 291 sanctioned in his favour on 26th February, 1993.

FINDINGS OF THE TRIAL COURT :

6. The Trial Court decreed the suit declaring the Plaintiff as the owner and in possession of Survey No. 172, Hissa No. 10B admeasuring 3H-48 Are and restraining the Defendants from causing obstruction to the peaceful possession of the Plaintiff. The finding of ownership and possession was based on the following observations:

- a) 7/12 extract for the year 2003-2004 shows the Plaintiff's possession, ownership and also encumbrance of Bank of Maharashtra.
- b) Mutation Entry No. 291 certified in favour of Plaintiff on 26th February, 1993 is unchallenged.
- c) The declaration of tenancy of Defendant No. 2 is only in respect of 0.45 Are land as against which the

proceedings before the Maharashtra Revenue Tribunal were withdrawn and the RCS No. 144/1993 for injunction filed by Defendant No. 2 was also withdrawn.

FINDINGS OF THE APPELLATE COURT :

7. The Appellate Court framed and answered the points for determination as under:

Sr. No.	Points	Findings
1)	Whether the appellants prove that on the date of the suit the appellants were in actual possession of the suit land in dispute referring to valid title ?	Yes
2)	Whether appellants prove that plaintiff did forcible possession over the land in dispute after obtaining ex-parte injunction order ?	Yes
3)	Whether the finding of the trial Court stands to reason ?	No.
4)	What order ?	As per final order.

8. The Appellate Court reversed the finding of the Trial Court on the following observations:

- a) In the plaint the boundaries of the suit land are not given and the sale deed has not been produced on record.
- b) No procedure was followed by Talathi while sub -

dividing Survey No. 172 Hissa No. 10.

- c) The Plaintiff has not disputed the Defendant's case that land to the north of the road admeasures 3H- 3 Are and land to the south of the road is about 2 hectares and the Plaintiff has not stated whether he has purchased and is in possession of land on the north of the road and in addition some piece of land on the south of the road.
- d) The Court Commissioner's report shows that in the standing crops some ditches had been excavated and there was new mango plantation. The report further shows that the Plaintiff had destroyed and damaged the standing crops by uprooting the crops and dug the ditches.
- e) The Plaintiff has admitted in his cross-examination that after obtaining ex-parte injunction on 5th August, 1996 he entered the field alongwith his labourers.
- f) The power of attorney executed in favour of Plaintiff shows that the owners were not in possession of the suit property.
- h) Civil Court has no jurisdiction to decide the issue of tenancy.
- j) According to the submission of the Advocate for the Plaintiff, the Bank loan of Rs. 87 lakhs was repaid. The encumbrance was noted on 7/12 extract on 8th April, 2004 which is subsequent event.

SUBSTANTIAL QUESTION OF LAW FRAMED :

9. The Appeal was admitted on the following substantial question of law:

“Whether the Appellate Court has committed an error of law in weighing the evidence on the point of possession?”

SUBMISSIONS :

10. Heard Mr. Joshi, learned counsel for the Appellant and Mr. Sawant, learned counsel for the Respondents.

11. Mr. Joshi, learned counsel for the Appellant submits that the suit property was given separate Hissa No. 10-B of survey No. 172 which was in possession of the Plaintiff. He submits that in the Tenancy Application, the Defendants had been held to be tenants only in respect of 45 Are land and the same has attained finality. Pointing out to the map annexed to the sale deed which is at page No. 95 of the Petition, he would submit that the Defendants are in possession of only 45 Are land. He would further submit that the findings of the Appellate Court as regards the property being divided by a road is irrelevant as he has purchased the property which is on the northern side of Survey No. 172 from the boundary of the road cutting through the property. He would further submit that the Appellate Court has recorded an erroneous finding that the sale deed was not produced. He has taken this Court minutely through the evidence on record and would submit that the case of ownership and possession has not been disturbed in the cross-examination. He would further submit

that the Defendants have not produced the rent receipt to demonstrate that they were paying rent in respect of the suit property. He submits that the possession of the Plaintiff is proved by virtue of the sale deed, the 7/12 extract as well as the encumbrance noted in the mutation entry. He submits that the Advocate for the Plaintiff had not made any submission that the entire loan was repaid and the Appellate Court has wrongly noted that the said loan was obtained only for the purpose of creating evidence and that within short time, the loan had been cleared. He submits that the same is borne out by the Affidavit in reply which was filed by the Plaintiff to the Civil Application No. 593 of 2016 before this Court pursuant to which the civil application was withdrawn by the Defendants. He submits that in the cross-examination, the Court Commissioner has accepted that he is not an expert. He would further submit that in absence of any case of Defendants that there was division of Survey No. 172 by road, the Appellate Court has erroneously gone into the issue. Broadly summarizing his submissions are as under :

- a) No rent receipt produced by the Defendants.
- b) The findings on the power of Attorney is erroneous as the Power of Attorney holder was not examined.
- c) The findings of the Appellate Court that the sale deed is not produced is contrary to the record as the sale deed was marked as Exhibit 118.
- d) The findings as regards the loan obtained is erroneous

as the reply in the Civil Application would indicate that the loan is still pending.

- e) The findings that there is an incorrect description of the land is without any objection in that respect in the Defendant's written statement.
- f) The cultivation by the Defendant is not proved and despite thereof, by virtue of the Court Commissioner's report, the Appellate Court has held that the land was being cultivated by the Defendants and there is an erroneous finding that the report of the Court Commissioner is not been disputed whereas in fact the cross-examination indicates that the report has been disputed.
- g) The spot inspection had taken place on 27th September, 1996 and the final report was submitted by the Court Commissioner on 10th July, 1997 after a period of 1 year.

12. *Per contra*, Mr. Sawant, learned counsel for the Respondent submits that the description of the suit property in the plaint is vague. He further submits that in the written statement, it was a specific case of the Defendant that 3H- 3Are land was in possession of the forefathers of the Defendants as tenants and that they were in possession of the suit property which is also evident from the Power of Attorney dated 6th August, 1992. He further submits that the sale deed has been executed on 20th January, 1993 and the Power of Attorney has been executed prior to the execution of the sale deed which indicates that the possession was not with the vendor and that being so, the possession could not have been

handed over by the vendor to the Plaintiff. He further submits that the vendor has not been examined by the Defendant to prove that the possession of the suit property was handed over to the Plaintiffs. He submits that it is evident from the report of the Court Commissioner that the Defendants were in possession of the suit property and were cultivating the land. He further submits that the draft report was submitted on 27th September, 1996 which has been marked as Exhibit 113 and the final report was submitted on 10th July, 1997.

13. Pointing out to the Plaintiff's cross-examination, he would submit that there is a categorical admission by the Plaintiff that there is no pleadings in the plaint that on the suit property he has planted Nachani, Till and Paddy etc. He submits that the plaintiff has admitted in the cross-examination that on 5th August 1996, upon injunction order being passed, he has entered into the property alongwith the labourers. He further points out that the Plaintiff has admitted that the Plaintiff has dug pits in the land on which the crops of Nachani were standing. He further draws attention of this Court to the Affidavits of the independent witnesses who have deposed about the possession of the Defendants over to the suit land. He submits that the Trial Court on the basis of the loan encumbrances which was shown in the mutation entry as well as on the basis of mutation entry has held that the Plaintiff is in possession without

noticing the Court Commissioner's report as well as the admission of the Plaintiff which indicates the possession of the Defendants. He submits that there is no proper description of the suit property and as such, no injunction could be granted. He submits that the question of law which has been framed by this Court at the time of admission does not amount to substantial question of law. In support of his submission he relies upon the following decisions.

- *Anathula Sudhakar vs. P. Buchi Reddy (dead) by Lrs. & Ors., [(2008) 4 SCC 594]*
- *P. Kishore Kumar vs. Vittal K. Patkar, [2023 0 (SC) 1165].*
- *Jitendra Singh vs. The State of Madhya Pradesh & Ors., [2021 0 (SC) 487]*
- *Suraj Bhan & Ors. vs. Financial Commissioner & Ors. [(2007) 6 SCC 186].*
- *K. Thulaseedharan vs. Kerala State Public Service Commission, Trivandrum & Ors. [(2007) 6 SCC 190].*
- *Subhaga & Ors. vs. Shobha & Ors., [(2006) 5 SCC 466].*

14. In rejoinder, learned counsel for the Appellant would submit that there is no dispute as regards the description of the property. He submits that the case of the possession of the Defendants is based upon oral evidence whereas the Plaintiff has produced documentary evidence to show his possession. He submits that it is not the case of the Defendant

that he has been dispossessed from the suit property. He submits that the Affidavit-in-reply of the Civil Application No. 593 of 2013 would indicate that there is a pending loan of Rs. 31 lakhs and also that the Plaintiff had received subsidy from the Government on the said land for plantation.

ANALYSIS :

15. I have considered the submissions and perused the record with the assistance of learned counsel for the parties.

16. As indicated above, the substantial question of law to be answered is whether the finding of the Appellate Court on the aspect of possession is not reasonably capable of being arrived at by taking into consideration the evidence as a whole. It is well settled that finding of fact is not open to challenge even if the appreciation of evidence is palpably erroneous and finding of fact incorrect. Some of the well recognised exceptions to non interference in exercise of jurisdiction under Section 100 of CPC is when the fact finding Courts have ignored evidence or acted on no evidence or have drawn wrong inference from proved facts by applying the law erroneously. If on the basis of the evidence on record, the findings of the fact finding Courts are demonstrably perverse, the findings can be reversed in second appeal.

17. The suit filed for perpetual injunction is governed by Section 38 of Specific Relief Act, 1963 which provides that perpetual injunction can be granted to prevent breach of an obligation existing in favour of the Plaintiff, whether expressly or by implication. The suit being for injunction, the burden was upon the Plaintiff to establish that he was in possession of the suit property as on the date of filing of the suit and his possession is sought to be invaded by the Defendants. As the substantial question of law framed was as regards the mis-appreciation of evidence by the Appellate court, I have scrutinised the evidence.

18. The Plaintiff has examined himself and deposed as to the contents of the plaint. In the cross-examination, the Plaintiff has admitted that in the tenancy case, the compromise which was entered into was only with the Defendant No. 2 and there is no signature of the other Defendants in the said tenancy case. He has further admitted that the land of 3H of the southern side is “warkas” land and there are four “cashew nuts trees” and “Raywal trees”. He has further admitted that the Court Commissioner has rightly recorded the factual position at site. Vital piece of admission has been given by the Plaintiff that it is not pleaded in the plaint that on the suit property there was a crop of Nachani, Paddy etc. He has further admitted that on 5th August, 1996 after the order of interim injunction was passed, he has entered the suit property along with his labourers. He

has further admitted that he has dug pits in the land on which the crop of Nachani, Paddy etc. was standing. These vital admissions militate against the case of the Plaintiff that he was in possession of the suit property after the execution of the sale deed in the year 1993.

19. The Plaintiff in support of his case of possession, relies upon the sale deed, 7/12 extract, encumbrances noted in the 7/12 as regards the loan obtained as well as the mutation entries.

20. On the other hand, the Defendants have adduced the oral evidence of the adjacent land owners and examined the Court Commissioner to show possession. The mutation entry would indicate that based on the sale deed, the revenue records are mutated in favour of the Plaintiff and that there is an encumbrance of mortgage noted. Even if these documents are taken into consideration, the same would reflect the title of the Plaintiff in the suit property. However, in the present case, we are concerned with prayer seeking relief of injunction which can only be granted if it is shown that the Plaintiff is in *de-facto* possession of the suit property. For that purpose, if we consider the affidavit of the adjoining land owners, the Defendants have examined one Maruti Thondu Shinde who has deposed that the original owner of the survey No. 172 was Subhash Bhaskar Bhide and others and on 2H land there were Mango saplings and on the balance 3.3 H, the Defendants and their forefather

were in possession as tenants. He has further deposed that he is the resident of the village since his birth and his property is adjacent to the suit property from the western side. Similarly, the Defendant has examined one Ravindra Shantaram Kurtadkar, who is also an adjacent land owner of land bearing survey No. 172/8 and 172/9. He has also supported the case of the Plaintiff.

21. Now, coming to the report of the Court Commissioner, the Court Commissioner came to be appointed for the purpose of spot inspection as it was the case of the Defendants that after the order of interim injunction was passed on 5th August, 1996, the Plaintiff had forcibly entered the suit land along with his labourers and had dug the pits on which the crops cultivated by the Defendants were standing. The Court Commissioner had tendered a draft report on 29th September, 1996 which has been marked as Exhibit 113 and the final report has been filed in the year 1997. The Plaintiff has admitted that the Court Commissioner has rightly recorded the factual position at site. The Trial Court has brushed aside the Court Commissioner's report in view of the documentary evidence produced by Plaintiff.

22. Perusal of the Court Commissioner's report would indicate that the property is divided into two parts. The Court Commissioner has noted that on the northern side of the property, there are trees as also there is a

crop of Till and in that crop there appears to be a fresh plantation of 3 mango saplings. The Court Commissioner had further noted that in various parts of the northern side of the survey No. 172 there are fresh mango saplings planted and in and around the open area there is grass. The Court Commissioner noted that some of the rice plantations were alive although in two places, the rice plantations were uprooted. The Court Commissioner also noted that on the northern side of the Till crop, the field appears to have been ploughed and in that there were new three mango saplings planted. In the cross-examination, the factual possession which has been depicted in the Court Commissioner's report was not disputed. The only suggestion given was that the Court Commissioner who was an advocate is not an expert in agricultural field and that he does not have any knowledge about the age of saplings planted. Even if that being so, the report of the Court Commissioner would sufficiently indicate that there were fresh plantation and that some of the Nachni, Till crops have been uprooted. For ascertaining the factual position at site or as regards age of saplings any expertise in agricultural field is not required. Pertinently, in the cross examination of the Defendants, there is no suggestion given by the Plaintiff that the crop which was standing on the property being on the northern side of the road was cultivated by the Plaintiff. The factual position evident from the Court Commissioner's

report is that there was standing crop on the suit property and considering the specific case of the Defendants which has not been disputed the Appellate Court has rightly held that there is no reason to disbelieve that the Defendant has cultivated the crop. The draft report was submitted on 27th September, 1996 and the final report was submitted on 10th July, 1997 which has been exhibited. It is not the case of the Plaintiff that there is any discrepancy between the draft report and the final report. The Appellate Court has rightly appreciated the evidence on record in form of the Court Commissioner's report in the background of the Plaintiff's pleaded case that he has cleaned the land and made arrangement for planting mango saplings.

23. Considering the documentary evidence which has come on record the Appellate Court considered that the separate Hissa No. 10-B has been prepared on the basis of the sale deed without following any procedure. The procedure which was contemplated under the Maharashtra Land Revenue Code as regards the giving of notices does not appear to be followed in the present case. The Appellate Court has taken into consideration the report of the Court Commissioner which indicates the factual possession that the land has been divided in two parts by the road into northern and southern side.

24. The plaint describes the suit property as Survey No. 172 Hissa No.

10b admeasuring 3H- 48 Are. The Defendants claim to be tenants and in possession of area admeasuring 3H- 3Are located on northern side of the road and plead that the original owner was in possession of area on southern side of the road on which there were mango orchards. As the injunction is claimed in respect of an area admeasuring 3H- 48 Are and the Defendants claim to be in possession of 3H- 3Are, there is a discrepancy not only in respect of the areas but also the location of the suit property. The Court Commissioner's map would indicate that the Survey No. 172 is divided by a road to which there is no challenge in the cross-examination. For purpose of grant of injunction, it is necessary for the property to be properly identified. The judgment of the Trial Court indicates that the sale deed of 20th January, 1993 has not been proved by the Plaintiff as the vendor or the witnesses were not examined. The Trial Court by considering the 7/12 extracts & mutation Entry No. 291 has accepted the possession of the Plaintiff over the suit property. The plaint does not give the boundaries of the suit property and as the sale deed was not proved, the same could not be read in evidence for identifying the property. The documentary evidence produced by the Plaintiff would establish the ownership of the Plaintiff over the suit property, however, the suit is not for recovery of possession on basis of title but for injunction on the basis of prior possession. The Plaintiff is required to bring evidence

which will identify the suit property and establish possession on the date of filing of the suit. The Appellate Court has therefore rightly observed that from the suit plaint, it is not clear whether the Plaintiff has purchased the northern portion of land or southern portion of the land. The aspect of possession will have to be established by showing actual use and cultivation as the suit property is agricultural land.

25. The Appellate Court has rightly considered the vital admissions given by the Plaintiff that it is not pleaded in the plaint that on the suit property there was a crop of Nachani, Paddy etc, that on 3rd August, 1996 after the order of interim injunction was passed he has entered the suit property along with his labourers, and, that he has dug pits in the land on which the crop of Nachani, Paddy etc. was standing.

26. The Appellate Court has rightly held that for the purpose of adjudicating the present dispute what is required to be determined is the actual possession on the date of the suit. The Appellate Court held that the Appellant was in possession of the land in dispute which admeasured 3H- 3Are. The Appellate Court held that the encumbrance of loan of Rs. 87 lakhs was a subsequent fact and it recorded the submission of the learned Advocate that the bank loan has been repaid. The document on which the reliance has been made by Mr. Joshi in the present case to show that the loan is still pending was not before the Appellate Court and the

Appellate Court has recorded the submission of the learned counsel for the Plaintiff that the amount has been repaid. If the submission have been wrongly recorded it was incumbent upon the Plaintiff to approach the Appellate Court to correct the submission which has been recorded. However, in the present case, the same has not been done and as such, the reliance on the Affidavit in the Civil Application cannot aid the case of the Plaintiff to show that no such submission had been made by the learned counsel appearing for the Plaintiff.

27. As held by the Apex Court in the case of ***Anathula Sudhakar*** (supra), in respect of an agricultural land, the possession may be established with reference to actual use and cultivation. As the suit was filed for injunction based on possession, the Plaintiff has to prove *de-facto* possession on the date of filing of the suit. The documentary evidence produced by the Plaintiff did not show *de-facto* possession of the suit property.

CONCLUSION :

28. The Appellate Court while deciding the issue of possession has rightly considered that there is no proper identification of the property by considering the evidence of the Defendants that they are in possession of 3H- 3Are land on the northern side of the road and the suit property is

described as 3-H 48Are without describing whether part of the same is partly on the northern side and partly on the southern side. The Appellate Court has considered the Court Commissioner's report which records the factual position on site showing standing crops and fresh mango plantations and coupled with the Plaintiff's admissions that it is not his case that there were standing crops on the suit land and that he had entered the suit property with his labourers after obtaining ad interim injunction on 5th August, 1996, the findings of the Appellate Court cannot be said to be based on no evidence or suffering from any perversity. Considering the evidence on record, the Appellate Court has rightly answered the issue of possession in favour of the Defendant on the correct appreciation of evidence on record. The substantial question of law framed by this Court is answered accordingly.

29. Having regard to the discussion above, the Second Appeal stands dismissed.

30. At this stage, the request is made for stay of the order for a period of four weeks. The effect of the order is stayed for a period of four weeks from today.

(SHARMILA U. DESHMUKH, J.)