

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 51 OF 2024**

Motiram Bapu Guram
V/S.

} ...Appellant

1. Yashawant Shankar Rawale,
Since Deceased through Heirs

A. Manik Yashawant Rawale & Ors.

} ...Respondents

Mr. Sudhir Prabhu, for the Appellant.

Mr. Ashok B. Tajane a/w. *Mr. Yogesh Thorat and Mr. H.M. Khupsare, for Respondent Nos.1A to 1C.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 March 2024.

P.C. :

1) By this Appeal, the Appellant challenges Judgment and Order dated 20 July 2016 passed by the District Judge, Sindhudurg, Oras in Regular Civil Appeal No.38 of 2012. The first Appellate Court has dismissed Appellant's Appeal and has confirmed the Decree passed by the Civil Judge Junior Division, Malwan in Regular Civil Suit No. 101 of 2013.

2) Plaintiffs filed suit in respect of the landed properties bearing Survey No. 108, Hissa Nos.5 and 6 and Gram Panchayat House No. 326 alleging that Defendants were obstructing Plaintiffs possession

in respect of the suit lands and the suit house. Defendants appeared in the suit and filed Written Statement. They did not dispute ownership or possession of the Plaintiffs in respect of the landed properties bearing Survey No.108, Hissa Nos.4, 5 and 6. However, so far as house property No.326 is concerned, Defendants took a defence that the said house was constructed on Defendants adjoining land bearing Survey No.94, Hissa No.5. It was Defendants case that Defendants allowed the Plaintiffs to construct house on their land and accordingly Plaintiffs possession of land on which House No.326 is constructed, is permissive in nature.

3) It appears that both the parties pleaded about conduct of measurements. Plaintiffs asserted in the plaint that suit properties were measured in the year 1996, whereas, Defendants contended that there was measurement in the year 2003. However, none of the parties proved their respective measurements before the Trial Court. During the course of evidence, Defendants witness admitted that he has no concern with the suit properties and the suit house. The Trial Court and the first Appellate Court have accordingly presumed that Plaintiffs are in settled possession of the suit house and have accordingly enjoined Defendants from obstructing Plaintiffs possession of suit lands bearing Survey No.108, Hissa Nos.5 and 6 and Suit House No.326.

4) I have heard Mr. Prabhu, the learned counsel appearing for the Appellant and Mr. Tajane, learned counsel appearing for Respondent Nos.1A to 1C.

5) It appears that there was serious dispute amongst the parties about the exact location at which suit House No.326 is located. While Plaintiffs contended that the location of the suit house is within the suit lands bearing Survey No.108, Hissa Nos.5 and 6, it was Defendants contention that the Defendants permitted the Plaintiffs to construct House No.326 in their own land bearing Survey No.94, Hissa No.5. Ideally, therefore the Trial Court ought to have ascertained location of the suit house by appointing a Court Commissioner especially in the light of failure on the part of either of the parties to prove their respective measurements. Be that as it may, since the Defendants admitted during the course of evidence that they have no concern with the suit lands, as well as Suit House no.326, both Trial as well as the first Appellate Court have recorded a finding of fact that Plaintiffs are in settled possession of suit lands bearing Survey No.108, Hissa Nos.5 and 6 as well as of Suit house no.326. Accordingly, both the Courts have proceeded to grant injunction against the Defendants.

6) If Defendants/Appellants believe that House No.326 has been constructed in their land bearing Survey No.94, Hissa No.5, they can file a suit seeking recovery of possession of portion of the land on which House No.326 is located. Since Defendants admitted before the Trial Court that House No.326 was constructed in accordance with the permission granted by the Defendants and that Defendants did not have any objection about Plaintiffs occupying House No.326, the Trial Court has rightly granted injunction against the Defendants.

7) Mr. Prabhu would express an apprehension that the Order of the Trial Court would be misused by the Plaintiffs to disturb Defendants possession in land bearing Survey No.94, Hissa No.5. I do not see any reason for the Plaintiffs to do so. The decree passed by the Trial Court is specific and emphatic. The injunction is granted only qua landed properties bearing Survey No.108, Hissa Nos.5 and 6 and House No.326. If Defendants believe that Plaintiffs are coming upon any portion of land bearing Survey No.94/5, it would be open for them to file a separate suit claiming injunctive reliefs against the Plaintiffs in that regard. Similarly, the Defendants can also file separate suit for recovery of possession beneath House No.326 from Plaintiffs, if they can prove that the said land is in the ownership of the Defendants. In my view, therefore the rights of the Defendants are appropriately protected by the impugned Decree.

8) No substantial question of law is involved in the Second Appeal. Leaving open all the remedies of the Appellants/Defendants as observed above, open, the Second Appeal is rejected.

9) All contentions of both the parties in any freshly filed suit, are kept open.

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SANDEEP V. MARNE, J.