



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 179 OF 2016

Mr. Shankar Ambo Patil

Since deceased through legal heirs : ...Appellants.

Versus

Smt. Gajubai Rama Thakare and Others. ...Respondents.

Mr. J. M. Joshi for the appellant.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. Heard.
2. Being dissatisfied by the concurrent findings of trial Court and appellate Court dismissing suit for injunction, the original plaintiff is before this Court.
3. Regular Civil Suit No.324 of 1997 was instituted by the plaintiff claiming that he had acquired ownership of suit property in proceedings initiated under section 32G of the BTAL Act and was also a holder of certificate under section 32M of BTAL Act certifying the

purchase of suit property. In support of his right to ownership and possession, the appellant relied upon 7/12 extracts and mutation entries which show his name in respect of the suit property.

4. The suit came to be resisted by the defendants claiming to be in possession. It was contended by the defendants that on the said property, which is described by the plaintiff as open land, there is a farm-house constructed by them in the year 1976 having Grampanchayat House No.148. It was further contended that the defendants are paying assessment tax of grampanchayat in respect of the said farm-house at the rate of Rs.20/- per year.

5. Parties went to trial Court and the trial Court upon consideration of documentary and oral evidence, dismissed the suit. As against this, the plaintiffs filed appeal being Regular Civil Appeal No. 140 of 2007, which also came to be dismissed.

6. Learned counsel appearing for the appellant would submit that the only reason why the suit for injunction is dismissed was the existence of structure on the suit property. He would contend that although the same was described as a house it was constructed for the purpose of keeping farm equipments. He submits that mutation entries as well as 7/12 extracts conclusively establish his ownership

over the suit property. According to him, by virtue of perversity in the findings, substantial question of law arises in the present case.

7. Considered the submissions and perused the judgments of trial Court and appellate Court.

8. The trial Court and the appellate Court have considered the case of plaintiff that the suit property was an open land. Considering the evidence on record, it is adequately demonstrated that on the open land, there is a house constructed of which there is no mention made by the plaintiff in plaint. The appellate Court has come to a finding upon consideration of the assessment extract of said house filed by the defendants, which shows their name in respect of the said house, that the defendants are in possession of the suit property.

9. For the purpose of grant of injunction, it was necessary for the plaintiff to plead and establish ownership as well as the possession over suit property. In the present case, there are concurrent findings as regards the possession of defendants established in the light of proof of existence of house in the suit property. The failure of plaintiff to plead the existence of said house is detrimental to the case of plaintiff as the property has not been properly identified. The documentary evidence on record in the form of 7/12 extracts and

mutation entries would demonstrate ownership and title of the plaintiff over suit property. However, for the purpose of claiming injunction it is necessary to show the *de-facto* possession over the suit property. It is well settled that even a trespasser cannot be evicted without following due process of law. In the present case, defendants are shown to be in settled possession of property and that being so, no injunction could have been granted. Admittedly, there is no relief of recovery of possession sought in the suit. The trial Court and the appellate Court on the basis of documentary evidence have rendered concurrent findings against the plaintiff.

10. In exercise of appellate powers under section 100 of the Code of Civil Procedure, 1908 this Court is not permitted to re-appreciate the evidence on record and to substitute the view of trial Court and appellate Court unless it is demonstrated that the findings are based on no evidence or evidence has been appreciated without proper application of law. In the present case, there is no such perversity demonstrated. As such, no substantial question of law arises. The second appeal is dismissed.

11. In view of the disposal of second appeal, civil/interim application(s) taken out in this second appeal does not survive and the

same is disposed of.

[Sharmila U. Deshmukh, J.]