

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 141 OF 2023
WITH
IA/1576/2023 IN SA/141/2023**

Bapu Vithu Bhopale And Anr.	...Appellants
Versus	
Keshav Nana Bhopale	...Respondent

....

Mr. Akshay Kulkarni, for Appellants.
Mr. Sangramsinh S. Yadav, for Respondent.

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CORAM : SANDEEP V. MARNE, J.

DATED : 08 MARCH 2024.

P. C. :

By this Appeal, Appellants challenge Judgment and decree dated 18 October 2022 passed by District Court, Kolhapur in Regular Civil Appeal No.106 of 2022. The First Appellate Court has allowed the Appeal instituted by the Respondent/Original Plaintiff and has reversed the decree dated 18 April 2022 passed by the Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.118 of 2015. The First Appellate Court has injuncted the Appellants from interfering Plaintiff's possession over the suit property or from damaging the same.

2. At the outset it must be observed that during pendency of this Appeal, an unsavory incident has taken place, where Appellants took law into their hands and demolished the structure in respect of which suit was filed and injunction was granted by the First Appellate

Court. By passing Order dated 06 April 2023, this Court has ensured that position is reversed and out of deference to the Order passed by this Court, Appellants have reconstructed the suit structure. Therefore, it is not necessary to delve deeper into this aspect, as by Order dated 26 April 2023, this Court has already recorded that no further action against the Appellants is required.

3. Turning to the merits of the Appeal, it is seen that Plaintiff instituted RCS No.118 of 2015 for injunction simplicitor in respect of house property bearing Gram Panchayat House No.519 (Old Gram Panchayat House No.512) admeasuring 18 ft. x 15 ft. admeasuring 270 sq. ft. Plaintiff claimed that the suit property was in his possession for 30-35 years. However, he did not disclose the manner of acquisition of possession of suit property. Though no specific assertion of ownership of suit property was made in the Plaint, Paragraph No.7 thereof contained a vague reference to the Plaintiff's ownership in respect of suit property. However, Plaintiff did not seek a declaration of ownership in respect of the suit property. It appears that the suit property is a sheep and goat shed.

4. Appellants/Defendants appeared in the suit and questioned correctness of the description of the suit property. They also claimed that the suit property is situated in Gat No.591 which is owned by the Defendants.

5. The Trial Court proceeded to dismiss the suit accepting Defendant's contention that the existence of the suit property could not be proved by the Plaintiff. First Appellate Court has however reversed the Trial Court's decree holding that though the suit house is situated on land bearing Gat No.951, Plaintiff is in settled possession thereof.

On this ground, First Appellate Court has granted injunction in favour of the Plaintiff.

6. I have heard Mr. Kulkarni, the learned counsel appearing for Appellants and Mr. Yadav, the learned counsel appearing for Respondent / Original Plaintiff.

7. it is settled position of law that in a suit filed for injunction simplicitor, the only issue that arises for determination is the possession. In ordinary course, the issue of title is not be decided in a suit filed seeking injunction. However, it is equally settled that while seeking injunction, where parties raise pleadings about ownership, it is permissible for the Court to even decide the issue of title. Reference in this regard can be made to the Judgment of the Apex Court in **Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors.**, 2008 (4) SCC 594 as well as **T. V. Ramkrishna Reddy Vs. M. Mallappa and Anr.**, 2021 SCC Online 674.

8. In the present case, Plaintiff did not make a specific assertion of ownership though a vague reference to ownership was made in paragraph No.7 of the plaint. It has come in evidence, especially on account of admission given by Plaintiff himself, that the suit house is situated in land bearing Gat No.951. It has also come in evidence that land bearing Gat No.951 is owned by the Defendant. Plaintiff did not produce any document to show that the land on which the suit house exists is owned by him. It appears that 7/12 extract is issued and Gat number is assigned in respect of the land, whereas the house property number is assigned by the Gram Panchayat in respect of a constructed structure. This is how the house is given a separate number bearing

Grampanchayat House No.519 (old No.512) although the same is situated on land bearing Gat no.951.

9. After assessing the evidence on record by Trial Court and First Appellate Court have held that the suit house is located on land bearing Gat No.951. This shows that Plaintiff's possession of the suit house is without any title. This appears to be the reason why Plaintiff consciously pleaded in the paragraph No.2 of the plaint that the suit house has been in his settled possession for 30-35 years, without indicating as to how he acquired possession thereof.

10. If Defendants / Appellants were confident that the suit house was situated on land belonging to them, in addition to defending the suit for injunction, ideally they ought to have filed a counterclaim seeking a decree for recovery of possession. The First Appellate Court appears to have granted relief of injunction in favour of the Plaintiff by following settled position of law that settled possession cannot be disturbed even by a true owner without following the due process of law. The Appellants will have to therefore adopt due process of law for the purpose of seeking recovery of possession of suit house from the Plaintiff. As and when such suit is filed, it would not be necessary for the Trial Court to institute enquiry into the issue of ownership as the same is already concluded in the present round of litigation where it is found that the Plaintiff's house property is situated on land bearing Gat No.951 falling in ownership of Appellant / Defendants.

11. In my view therefore it is not necessary to disturb the relief of injunction granted by the First Appellate Court in favour of Plaintiff. As observed above, grant of such relief in favour of the Plaintiff by the First Appellate Court would not come in the way of the

Appellants / Defendants in instituting their own suit for recovery of possession of the suit house from Plaintiff.

12. No substantial question of law is involved in the Appeal. Reserving liberty for the Appellants to file a suit for recovery of possession from Plaintiff, Second Appeal is rejected. Since the Appeal is disposed of, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

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