

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 36 OF 2024
WITH
INTERIM APPLICATION NO. 635 OF 2024
IN
SECOND APPEAL NO. 36 OF 2024**

Sumanbai W/o Walmik More and ors

.....Appellants

Vs.

Laxman Dattu Pawar
(Decd. Thr. LRs) Bhausahab Laxman
Pawar and Ors

.....Respondents

Mr. N. R. Bubna for the appellants

CORAM : GAURI GODSE, J.

DATE : 18th DECEMBER 2024.

IRESH
MASHAL

ORDER:

Digitally
signed by
IRESH
MASHAL
Date:
2024.12.21
17:30:32
+0530

1. Heard learned counsel for the appellants. This appeal is preferred by the original plaintiff to challenge the judgment and decree passed by the first Appellate Court dismissing her suit for simplicitor injunction.

2. Learned counsel for the appellants submits that the defendant had relied upon a decree for injunction passed in Regular Civil Suit No.

369 of 1984, instituted by predecessor-in-title of the defendant. He submits that the first Appellate Court recorded a finding in paragraph 12 of the judgment that a decree of 1984 was *non est* and without jurisdiction as it was passed in respect of the property beyond the subject matter of the suit. He submits that in spite of the findings in paragraph 12, the learned first Appellate Court erred in reversing the findings recorded by the trial Court in favour of the plaintiff. He submits that admittedly, the plaintiff was the owner of entire survey no. 39/1A out of which portion of 1Hector 40 Are was sold to predecessor-in-title of the defendant. He further submits that some other portions were also sold by the plaintiff to other parties and remaining 51 Are was with the plaintiff. He therefore submits that in view of the admitted facts and the findings recorded by the first Appellate Court in paragraph 12, the decree in favour of the plaintiff is erroneously set aside by the first Appellate Court. He therefore, submits that the second appeal would raise substantial question of law on the perverse findings recorded by the first Appellate Court.

3. I have perused both the judgments. Learned counsel for the appellant has tendered copy of the judgment and decree passed in R.C.S. No. 369 of 1984. The said decree is passed in a suit filed by

predecessor-in-title of the respondent granting injunction against the present plaintiff restraining her from obstructing possession of the plaintiff over survey no. 39/1A admeasuring 5 Hector 31Are. The first Appellate Court has referred to the said decree and held that the said decree was passed beyond the subject matter of the suit where prayer was only for 1Hector 40 Are. Learned counsel for the appellant may be right in submitting that the first Appellate Court has recorded a finding that the decree passed in the said suit of 1984 lacks inherent jurisdiction.

4. However, the first Appellate Court has considered the pleadings and evidence on record and recorded a finding of fact in paragraph 13 of the judgment. The first Appellate Court held that the entries in 7/12 extracts do not support the plaintiff's case of being in possession of the suit property. The learned Appellate Court has thus reversed the findings recorded by the trial Court after considering the entries made in 7/12 extract and the measurement map.

5. A perusal of the plaint in the present suit and the written statement indicates that admittedly the plaintiff had sold part of her land to the defendant's predecessor-in-title. There is no dispute that

certain other portions were also sold by the plaintiff in favour of other third parties. Considering these admitted facts, the plaintiff cannot be held entitled to a decree for injunction in the absence of any evidence with regard to her possession on the remaining area. In view of the defence raised and the fact that the plaintiff had sold the part of her land to third parties, the plaintiff would not be entitled to a decree of injunction in the absence of any supporting evidence of she being in possession of the suit property, i.e. the remaining area of survey no. 39/1A.

6. The first Appellate Court has also recorded a finding of fact that the plaintiff was unable to prove that there was any obstruction on the part of the defendants on the plaintiff's possession. Thus, in the absence of proof of possession and obstruction by the defendants, there is no question of any decree for injunction against the defendant in whose favour there is a sale deed by the plaintiff with respect to part of the same survey number. I do not find any illegality or perversity in the findings recorded by the Appellate Court.

7. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

8. In view of dismissal of second appeal, Interim Application No. 635 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]