



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**SECOND APPEAL NO.432/2009**

Smt. Latabai w/o Bhayaji Muddamwar,  
aged 39 years, Occ. Household work,  
r/o Navegaon (Murkhala), Post Mudza,  
Tah. and Dist. Gadchiroli.

**.....APPELLANT**

**...V E R S U S...**

Smt. Sarita wd/o Bhaskar Pradhan,  
aged 35 years, Occ. Household work,  
c/o Asha Vitthal Gagi, Plot No. 14,  
Navegaon (Murkhala), Post, Mudza,  
Tq. Dist. Gadchiorli.

**...RESPONDENTS**

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Mr. K. Chiwarkar, Advocate for appellant.  
Mr. M. L. Vairagade, Advocate for respondents.  
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**CORAM:- ANIL L. PANSARE, J.**  
**DATED :- 26.03.2024**

**ORAL JUDGMENT**

The appeal has been admitted on the following  
substantial questions of law.

*“i) Whether the learned appellate Court has committed a grave error in law in failing to appreciate that the appellant has a better possessory title than the respondent over the suit property, in spite of it holding that “the defendant does not have any legal right in the property, her husband being in police, encroached on the Government property?”*

*ii) Whether the learned appellate Court has perversely appreciated the position in law holding that it is only the owner who has a right to evict the defendant and that the plaintiff will not have any locus?*

*iii) Whether the learned lower appellate Court has perversely appreciated the fact that the plaintiff and defendant are on equal footing, in spite of it holding that the defendant is admittedly an encroacher and the appellant has come into the possession of the suit premises in due course from the legal occupants?”*

2. The appellant-plaintiff had filed suit bearing Regular Civil Suit No. 109/2006 for possession and removal of encroachment. The respondent–Defendant filed written statement as well as counter claim seeking injunction against the plaintiff to not cause obstruction. The Trial Court, vide judgment and decree dated 28.03.2008, decreed the suit and dismissed the counter claim and directed the respondent-defendant to remove the encroachment and to hand over vacant possession of plot no.10, admeasuring 195 Sq. Mtr. situated in survey no. 60 of mouja Navegaon (For short, “Suit Plot”). The respondent had challenged the decree before the First Appellate Court in Regular Civil Appeal No.31/2008. The First Appellate Court, vide judgment and decree dated 29.06.2009, allowed the appeal and dismissed the suit.

3. Having heard learned counsel for the appellant, what transpires is that neither appellant nor the respondent has a document of title over the suit plot. In fact, the manner in which suit plot is described, its identity cannot be fixed. Consequently,

the decree, even if granted, would be unexecutable. The appellant has described the suit plot to be a plot bearing no. 10, situated in survey no. 60 of mouje Navegaon. The boundaries are not given. The suit is short of compliance of Order VII Rule 3 of the Civil Procedure Code, 1908, on identity as well as on encroachment.

4. Learned counsel for the appellant submitted that the land bearing Survey No.60 was originally owned by seven persons namely Nanaji, Balaji, Gopala, Ganpat, Purushottam and Sushila. Out of them, three persons namely, Balaji, Purushottam and Sushila sold their undivided shares to 14 persons namely, Smt. Kamal Barsinge, Namdeo Meshram, Sau. Rekha Ghagi, Chhaya Wasnik, Bhimrao Sahare, Ramji Zode, Sau. Kusum Dongre, Rajendra Dongre, Nikesh Shiraskar, Sau. Rekha Nimgade, Sudha Meshram, Shamrao Gedam, Sau. Nalini Sayam and Sau. Asha Ghagi. These 14 persons have carved out the layout and sold the suit plot to one Kusum Dongre, who allegedly sold it to Asha Nandeshwar on 14.11.1995. In turn, Asha has allegedly executed an agreement to sell dated 04.03.2002, in favour of the appellant and put her in possession of the suit plot.

5. The pleadings, however, indicate that in partition, the suit plot came to the share of Sau. Kusum Dongre. The partition

deed has been not placed on record. The appellant has also not placed on record the sale deed executed by three out of seven owners of Survey No. 60, in favour of 14 persons. The layout under question is not a sanctioned layout. Thus, there is absolutely no evidence as to who were owners of Survey No.60 or in what capacity seven persons were holding the said land.

6. When inquired, counsel for the appellant submits that the said survey number was a Class-II occupancy land and would require permission of competent authority before valid alienation. He further submits that the transfer is subject to payment of premium. This procedure has been admittedly not followed in the present case. This transaction itself is thus not recognized by law. Therefore, there arises no question of transfer of valid title either in favour of 14 persons or in favour of Kusum, followed by Asha. So far as the appellant is concerned, her claim is based on agreement to sell dated 04.03.2002. The sale deed has been not executed till date. The appellant intends to rely upon the agreement to sell to establish her possession. In fact, the Trial Court has relied upon the said agreement to sell to render a finding in favour of the appellant, which finding is contrary to the law inasmuch as the agreement to sell, which contains recitals of possession, is not a registered document. It is, therefore, hit by

Section 17 read with 47 of the Registration Act, 1908 and cannot be read in evidence to establish possession.

7. The First Appellate Court has, therefore, rightly corrected the mistake committed by the Trial Court. The First Appellate Court has noted that none of the predecessors of appellant had a valid title and, therefore, Asha was not entitled to sell the suit plot to the appellant. The First Appellate Court has taken note of the fact that even respondent has no valid document of title in her favour. Thus, neither the appellant nor the respondent has a valid title and accordingly the First Appellate Court has dismissed the suit and maintained the dismissal of counter claim.

8. The Courts below have also noted that the appellant failed to prove that she was in possession of the suit plot. In fact, the appellant has pleaded that during demarcation, she came to know that defendant has encroached upon the suit plot. Thus, upon own showing of appellant she gathered knowledge of encroachment only after demarcating the suit plot. In that sense, she was not even aware of the location of the suit plot. Thus, the pleadings indicate that she was never put in possession of the suit plot. In any case, she did not lead any cogent evidence to prove

that she was in possession of the suit plot. Therefore, there arises no question of she possessing better possessory title than the respondent over the suit property. The first substantial question of law is accordingly answered in the negative.

9. Once it is found that the appellant had no better possessory title, the question of her right to evict the respondent does not arise. Accordingly, the second substantial question of law will require no answer.

10. So far as the third substantial question of law is concerned, the discussion made hereinabove is sufficient to hold that neither the appellant nor the respondent has valid document of title to support their claim. They, therefore, stand on equal footing. The encroachment made by the respondent is in the context of she possessing no valid document of title.

11. The First Appellate Court has rightly held that the predecessor of appellant had no valid title and, therefore, had no authority to sell the suit plot and further that appellant failed to show that she was put in possession of the suit plot. Viewed thus, it cannot be said that the appellant has come into possession of the suit plot in due course from legal occupants. The third question of

law is, thus, not involved in the present case.

12. Having answered the questions of law in the manner above, there is no substance in the second appeal. The First Appellate Court has rightly held that neither the plaintiff nor the defendant is entitled for relief as claimed. The appeal is accordingly dismissed.

13. This case appears to be a case of an attempt to encroach upon the land belonging to the Government. Copy of the order be served upon Collector, Gadchiroli for taking appropriate steps for acquisition of property, in accordance with law.

**(Anil L. Pansare, J.)**

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