



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

905 SECOND APPEAL NO. 73 OF 1994 WITH
CIVIL APPLICATION NO. 2854 OF 1994
IN SA/73/1994

Shri Jahangir Fakira Sandanshive
Through his General Power of Attorney
laxman Jahangir Sandanshiv
age 34 years, occ. Agril
r/o Patonda, Tq. Amalner
Dist. Jalgaon .. Appellant

versus

1. Janglu Jahangir Sandanshiv
age 40 years,
2. Ragho Jahangir Sandanshiv
age 40 years,
3. Daulat Jahangir Sandanshiv
age 36 years,
4. SureshJahangir Sandanshiv
age 25 years

All labourers, r/o Patonda
Tq. Amalner, Dist. Jalgaon. .. Respondents

Mr. N. V. Dhake, Advocate holding for Mr. G. V. Wani, Advocate for the
Appellant.

CORAM : R. M. JOSHI, J.
DATE : 8th JANUARY, 2025.

JUDGMENT :

1. This appeal takes exception to the concurrent findings recorded by the Trial Court in Regular Civil Suit No. 76/1986 and First Appellate Court in Regular Civil Appeal No. 30/1993 holding that Plaintiff is not entitled for relief of injunction in respect of the suit property.

2. The facts which led to filing of this appeal can be narrated in brief as under :-

Jahangir Fakira Sandanshive is owner of Gat No. 148 admeasuring 1 H 26 R situated at Patonda, Tq. Amalner. The suit came to be filed through his son and constituted attorney Laxman Jahangir Sandanshiv. It is the case of Plaintiff that suit property was granted to him by the Government on 05.12.1973 and vide mutation entry No. 2688 is name was recorded as owner thereof. It is the case of Plaintiff that he is in possession of the suit property. It is specifically claimed that the suit property is not transferable. There is allegation against Defendants about causing interference into possession of the suit property and hence suit for simplicitor injunction came to be filed.

3. Defendants filed written statement and denied the claim of Plaintiff. It is the case of Defendants that Plaintiff's son Laxman had obtained loan of Rs. 50,000/- from State Bank of India for purchase of metador and Defendant No. 1 Janglu Jahangir and one more person Dauld stood as guarantor to the said loan. Since Plaintiff's son failed to pay instalment of the said loan regularly and as he was unable to make repayment thereof, Plaintiff requested the Defendants to pay Rs. 31,000/- as a loan and as a security of the said loan he mortgaged the said to him. It is claimed that from 27.07.1982, Defendant No. 1 is in possession of the said land under agreement.

4. Plaintiff did not enter the witness box however, he examined his son Laxman as constituted attorney and one more witness Damu Garhad Wankhede. Defendant No. 1, on the other hand, stepped into witness box and specifically deposed about Plaintiff i.e. owner of the property handing over possession thereof to him as against repayment of loan. His evidence is supported by testimony of three witnesses.

5. Learned Trial Court accepted the case of Defendant No. 1 about he being in possession of the suit property and dismissed the suit. Dismissal of suit came to be upheld in Regular Civil Appeal No. 30/1993.

6. While admitting the appeal, following order came to be passed :-

The effect of document titled as mortgage deed at Exhibit 13 since it is not a registered one as required by law is substantial question of law.

7. Learned counsel for Appellant submits that the Plaintiff has come out with a specific case about he being owner of the suit land and in possession thereof. To support said submission, reliance is placed by Plaintiff on revenue entry indicating his possession over the suit property. It is his submission that the mortgage deed is unregistered document and as such the said mortgage deed ought not to have been relied upon by the Courts below for the purpose of accepting case of Defendant No. 1. It is his further submission that the evidence of witness examined by Defendant No. 1 is not relevant for decision of the case. He submits that dismissal of the suit without considering the validity of mortgage deed is not proper.

8. There is no dispute about the fact that the suit filed by Plaintiff is for simplicitor injunction. Thus, in order to succeed in seeking injunction it is necessary to establish possession over suit property, when possession of Plaintiff is denied specifically by Defendants. Though he claims that the suit property is not transferable, there is specific evidence led by Defendant No. 1 supported by the evidence of witness to say that on 27.02.1982, the suit property came to be handed over by owner i.e. Plaintiff to Defendant No. 1. The said handing over of property was against repayment of loan advanced by him. It is pertinent to note that the Plaintiff inspite of such specific stand being taken by Defendant No. 1 has not entered into witness box in order to deny the factum of handing over of possession. As far as evidence of the constituted attorney of Plaintiff is concerned, he has no personal knowledge about incident of handing over possession. On the other hand, the witnesses examined by Plaintiff are able to depose possession of Defendants over suit land. One of the witnesses, Sayad (DW 4) is independent witness and adjoining land owner. There is no reason to discard evidence of this witness and other witnesses examined by

Defendant. Thus there is no contrary evidence to evidence led by Defendants indicating possession of the suit property.

9. In any case, this suit is for simplicitor injunction and since in any case Defendant No. 1 has been able to prove that he was in permissible possession of the suit property, the question of allowing the suit or granting injunction against Defendant does not arise. In view of this, the other issues sought to be raised by Plaintiff in appeal become redundant. It is also pertinent to note that mortgage deed which is said to have been unregistered document was never proved before the Trial Court and as such deciding the issue of correctness thereof does not arise. This Court, therefore, finds no substantial question of law being involved in the appeal. Hence, appeal stands dismissed.

10. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb