



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

**SECOND APPEAL NO. 212 OF 2024 WITH
CIVIL APPLICATION NO. 2654 OF 2024
IN SA/212/2024**

Deelip Bhausahab Chabukswar And Ors

VERSUS

Raghunath Dagdu Pawar

Mr. A. G. Dalal, Advocate for appellant

Mr. V. V. Tarde, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 09th January, 2025

PER COURT :-

1. This appeal under Section 100 of Code of Civil Procedure takes exception to the judgment and decree dated 11.07.2023 passed by the First Appellate Court in Regular Civil Appeal No. 02 of 2020 whereby the judgment and decree of dismissal of the suit filed by respondent/plaintiff came to be reversed.

2. Plaintiff filed suit against defendant bearing Regular Civil Suit No. 312 of 2016. It is his contention that he is owner of the suit property and that the defendant causing obstruction thereto. In the written statement, defendant did not dispute the ownership of the plaintiff but he denied allegation of plaintiff about causing obstruction to possession of plaintiff.

3. The learned trial Court dismissed the suit with observation that the plaintiff except that his oral evidence, has not led any other evidence to prove obstruction caused by the defendant. This finding is reversed by the First Appellate Court relying upon the evidence of plaintiff. It is held that the evidence of plaintiff cannot be discarded and dismissed the suit.

4. Heard learned counsel for both sides.

5. Plaintiff herein has come out with a specific case that he is the owner of the suit property and the defendant is causing obstruction to his possession. Defendant does not dispute the ownership and possession of plaintiff over the suit property. This is not the case where plaintiff has not led evidence to substantiate the case. He stepped into witness box and depose the defendant causing obstruction to his possession. Moreover, the fact of resistance of the defendant to the suit for injunction, itself is sufficient to show that there is substance in the contention of the plaintiff that his possession is sought to be obstructed. Having regard to these facts, this Court finds no substance in the challenge to the findings recorded by the learned First Appellate Court. It was always open to the First Appellate Court to appreciate the evidence and record fresh findings of facts. For want of perversity herein,

no interference is called in impugned judgment.

6. Since, no substantial question of law involved in this Appeal, it stands dismissed. All pending applications stand disposed of.

(R. M. JOSHI, J.)

bsj